
ENGLISH JUSTICE

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By

"SOLICITOR"

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"Supposing he were not great, Philip, only a big clay statue. A statue propped up by sticks. A clay thing, gilded. Rats gnawing at it. The wind shaking it. The sun cracking it. And dead men, Philip, dead men underneath it in the dust, fumbling at it to bring it down."

(*The Tragedy of Pompey the Great*,
JOHN MASEFIELD.)

"In this country justice is open to all—like the Ritz Hotel."

(MR. JUSTICE MATHEW.)

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PREFACE

ENGLISH Justice, and especially English Criminal Justice, has for many centuries borne a high reputation. Partly this has been due to the fact that our laws, to a large extent based upon custom, have, owing to our freedom from invasion, been more strongly enforced for longer periods than those of any other country. Partly it may be due to a sense of fair play which is alleged to be peculiar to this country, and which has been variously attributed to cricket, the old prize-ring, Alfred the Great, and the innate excellence of the English character. The jury system, which has been of such importance in bringing the ordinary citizen in touch with the administration of the law, has played its part. So also has the independence of our judges, which, in spite of unfortunate exceptions, has been remarkable. Although the story that Sir William Gascoigne, when Chief Justice, committed Prince Henry, is without foundation, the fact that it has been generally believed is significant.

It is unfortunately a fact that this country is singularly uncritical of itself and its institutions. Since the Greeks talked of Barbarians no nation has used a phrase carrying such a meaning as our term "un-English". We assume that all must be well to an extent that may some day lead to disaster. To take one instance, after enjoying a Naval supremacy fought for during centuries and unchallenged for more than fifty years, we obstinately refused to see that ironclads had rendered our wooden fleet obsolete. And this at a time when our relations with the French, who had built those same ironclads, were of the worst. Within

our own generation high naval and military authority ridiculed the notion that aircraft could play any important part in war. Confidence in the administration of justice in this country is supposed to be, as Kipling says, "Ancient right unnoticed as the breath we draw." It has for many years been taken for granted by the articulate classes that English Justice is, humanly speaking, perfect. It has been said so often that even foreigners are thought by us to believe it. A typical remark is that of Mr. Claud Mullins at the beginning of his book, *In Quest of Justice*, where, on page 4, he speaks of

> "our criminal law and procedure, branches of our judicial administration in which there is not very much that needs improvement and which we are fully justified in claiming to be the best in the whole world."

It is not to be supposed that Mr. Mullins meant anything in particular by what he said. His observation was made so much by force of habit that he repeated it in almost exactly the same words in an article in *The Daily Telegraph*. Yet the Junior Bar, Police Court Solicitors and their clerks, Court Missioners and Probation Officers, Reporters and Prison Warders have no illusions in their private conversations, though on public occasions some of them talk like Mr. Mullins.

It should be unnecessary to emphasise the importance of confidence in the administration of justice. This confidence has made our revolutions comparatively bloodless, and the distinction between legislative, administrative and judicial functions has until recent years been jealously maintained. It is probably true that the working classes as a whole have not shared in this positive belief in English Justice. But passive indifference is one thing; active disbelief in the fairness with which our laws are administered is quite another. And it is to the latter state of mind that the working classes are now trending. Partly

this is due to the fact that laws, and regulations having the force of law, now affect the daily life of the people in a way they seldom did in the past. The clear distinction between civil and criminal cases has gone, and with it much of the old respect for law as law. Mainly, however, this new attitude is due to realisation that the theory of the perfection of English Justice is humbug.

The trouble is made worse because the facts are not sufficiently appreciated, even by those who know them. I once addressed a meeting with regard to certain abuses in our magisterial system. By chance I travelled up with a friend of mine, a magistrates' clerk. On hearing what I was doing he expressed his entire agreement, and, to my horror, wished to come to the meeting and support me. I had to dissuade him, as a number of the worst cases I was using as illustrations had occurred in the court where he, for practical purposes, presides. One was reminded of M. Jourdain and his prose. The clerk in question is a clever, and, in private life, a kindly man. On another occasion a magistrate, who had been criticised in the Press for his bullying attitude towards an accused girl, gave me an account of the affair not even remotely related to the facts. He was an old man, and had forgotten that I had been actually present in court when the incident happened. As for the police, in private they make no pretence of observing the rules which are supposed to bind them.

English Justice is living upon its great name. It is probable that even in the past its high reputation was relative, and depended a good deal on the vileness of the systems with which it was contrasted. However that may be, over twenty-five years' experience of our courts in various districts and a wide acquaintance with the working, the criminal and the quasi-criminal classes have satisfied me that lack of confidence in the administration of justice is rapidly growing. That such

lack of confidence constitutes a grave peril to the State is obvious. Many people seem to think that it is dangerous to criticise judges, magistrates or police. Without public criticism institutions, however excellent, become unhealthy and decay. Even if it were desirable to do so, however, it is impossible to hush things up. The mischief is done. What is urgently required is that criticism shall be well informed, and directed to the proper quarters. Diagnosis is needful before remedies are applied. But first it is necessary to convince the upper and middle classes, from whom alone reform can come, that English justice is not what they vaguely suppose it to be. What are called the lower classes are sufficiently convinced, but the only remedy they can apply is destruction.

I believe everything said in this book is true. Most of what is stated as fact is within my own personal experience, or told me at first hand. Since this is so, there may, of course, be difference of opinion as to the extent of the evil, for individual experience is necessarily limited. On this point I can only say that whenever I have been among men or women who know the facts behind our fair-seeming judicial machinery any story I have told has been capped by others far worse. It is unlikely that my experience has been exceptional.

PREFACE TO SECOND EDITION

SINCE this book was published I have received confirmation of the statements made in it from magistrates, barristers, solicitors, journalists, clergymen and others. Persons from all quarters of England have told me that hitherto they had supposed their own courts to be exceptionally bad.

It is true, as one or two critics have said, that human nature is fallible, and they suggest that the admitted injustices in the magistrates courts are often due to this. I have tried to show that the injustices are not inevitable, but largely due to mistaken views as to magisterial duties, and to faulty organization. But in any event it is surely of importance that magistrates should not deliberately be appointed from a class of men peculiarly liable to biased judgment, and that there should be some way of putting right the mistakes which are admittedly inevitable. I hope to see the unpaid magistracy reformed, not abolished.

With regard to imprisonment for debt, there appears to be unanimity as to the necessity for changes in the law. At the recent meeting of the Magistrates Association Miss S. M. Fry gave some striking figures with regard to the close relation between unemployment and the number of debtor prisoners.

I wish to thank the numerous correspondents who have given me interesting information and suggestions, and to remind my readers that London and the Home Counties form only a fraction of England.

ENGLISH JUSTICE

CHAPTER I

PENAL LAW

I. Principles

THERE is a deep-seated shrinking on the part of most people from coming in personal contact with the administration of the law. This is especially the case among the poorer classes. They have a dread of the "police court", a dread which often prevents a necessary witness from coming forward. One of the commonest things for those whose professional duties bring them in contact with the Courts of Summary Jurisdiction is to be told by some respectable man or woman that they have never been in a police court in their lives, and that they "couldn't abear anyone related to them going there". Many a time I have found employers, with the best intentions in the world, preventing servants or employees coming forward to give evidence, not only in such matters as affiliation proceedings, but even in running down cases. There is an idea that contamination of some sort is involved for all who get mixed up in police court proceedings. Even to receive a "lawyer's letter" is regarded by some of the respectable poor as a disgrace, while to be "summonsed" is terrible. This naturally leads to ignorance of the law and its procedure among the uneducated classes. Among the middle and upper classes there is almost equal ignorance, slightly, but only slightly, tempered by their habit of attending or reading about murder trials whenever possible and

by the existence of a small percentage of lawyers and magistrates among them. This ignorance of the law is reflected in the technical inaccuracies of almost all legal references in literature. Authors, however, are often good observers, and record incidents which, though legally irregular and wrong, constantly occur in practice. Motoring prosecutions were beginning to spread knowledge of our police courts and their ways, but a practice of hearing motoring cases on special days is growing.

The result of this detachment of the mass of the people from the administration of the law is that there is no healthy public opinion to prevent the existence of abuses. The Press is not much help. Very little space is given to reports of any but sensational or unusual cases, and, unless someone makes a scene, irregularities, and even serious injustices, pass unnoticed. Unfortunately, newspaper reports are so often inaccurate that even when they do expose some miscarriage of justice little notice is taken of the matter. The commonest mistake made by those inexperienced in weighing evidence is to reject the whole of a story because the witness who told it has made mistakes, or even lied, as to part.

The working-classes know of the injustice that occurs in the police courts. Not only are they told by those who are compelled to attend there, but, especially in these days of unemployment, there is nearly always a large audience of regular spectators in the public seats. Mere presence as a looker-on does not count as "being in a police court" apparently. But they do not in the least understand the procedure, they know that the innocent are often convicted while the guilty go free, and, for reasons that will be shown later, they believe matters to be even worse than they are.

Since this general ignorance of law and procedure exists, it is necessary to give an outline of our criminal and quasi-criminal law and the system under which it

is administered before proceeding to criticise its working. It is needful also to emphasise that the following description is written for the layman, the man in the street, and not for the lawyer and the historian. Before going further, I may point out that more than a third of the number of persons taken to prison do not go there as a punishment for crime, but because they have made default in payment of money or have been remanded to await trial, not followed by sentence of imprisonment. In addition a large number, 11,579 out of a total of 56,564 in 1929, go to gaol because they have not paid fines, usually because payment was impossible for them. Poverty, in effect, is still a crime.

It may broadly be explained that the magistrates, sitting in what are called police courts, try summarily minor criminal and quasi-criminal cases, or by consent certain other charges, and conduct preliminary inquiries into more serious cases, which, if a prima facie case is shown, are committed for trial at Quarter Sessions or Assizes. Certain magistrates, or in many towns barristers who are appointed Recorders, hold Quarter Sessions to deal with graver crimes. Judges at Assizes, including the Central Criminal Court, called the Old Bailey, for the London area, deal with murder and the major crimes. From the police court there is an appeal to Quarter Sessions and from Assizes to the Court of Criminal Appeal. Those who are bored by further detail may proceed to the next chapter, though I have tried to condense the necessary information as much as possible.

Technically, a crime is defined in Halsbury's *The Laws of England* as " an unlawful act or default which is an offence against the public, and renders the person guilty of the act or default liable to legal punishment ".

There is a difference between public and private wrongs, although sometimes, as in the case of common assault, either civil or criminal action may be taken.

Private wrongs are matters which concern the individual citizen, and are the subject of civil action, the kind of dispute that is dealt with in the County Court, or before a High Court Judge at Assizes or in London. Crimes, or public wrongs, are the subject of criminal prosecutions, and are dealt with by magistrates at the "police court" or Quarter Sessions, by stipendiaries and London Police Magistrates, by Recorders, or by judges at Assizes or the Old Bailey.

Very broadly, crimes fall into four classes. Offences against the Government and its administration, such as treason, bribery, perjury, or coining; offences against public order, such as bigamy, indecency, unlawful gaming, or criminal libel; offences against the person, such as murder, manslaughter or assault; and offences against property, such as theft, forgery or arson.

Crimes are also divided into treasons, felonies, and misdemeanours. The distinctions between these classes, though of considerable technical importance, do not now make any vital difference to the general principles which apply when a person is tried for an offence.

The first of these general principles is that a person is presumed to be innocent until the contrary is proved. This is a basic principle of English law, and it should constantly be kept in mind. It is almost impossible to over-emphasise its importance, for any infringement may overthrow our whole system of criminal justice. For instance, our method of trial by the alternate presentation of the two sides of a case to a judge and jury, or a bench of magistrates, instead of by an inquiry such as takes place in a Coroner's Court, would have to be entirely reconstructed if the presumption of innocence were not maintained. It is implied in Magna Charta itself. And once a man has been tried he cannot be put on trial again for the same offence. Another vitally

important principle is that the best possible evidence should be given, which implies the inadmissibility of hearsay evidence. Most people know the famous ruling of Mr. Justice Stareleigh, in the case of Bardell *v.* Pickwick, that what the soldier said is not evidence. A court must take into consideration nothing but the evidence in the case before it, and witnesses other than experts must not be allowed to give their opinions, but must speak only as to facts. Leading questions, that is questions which suggest their own answer, must not be put to a witness by the party calling the witness. Previous convictions must not, except in certain exceptional instances, be disclosed during the hearing of a case.

In addition, confessions in any form are looked at very strictly, and if obtained by any threat or other inducement by a person in authority will be inadmissible. Anything in the nature of the American "Third Degree" is illegal, and the judges during the last twenty years have formulated rules with regard to the questioning of suspected persons and prisoners in custody.

The public have a right to be present in court during the hearing of a criminal case, provided of course that there is sufficient accommodation and no disturbance is created. To this rule there are very few exceptions. The publicity of court proceedings is of obvious importance, and the Press have rightly been very jealous of any attempt at curtailment.

Great care has to be taken that the court, whatever its nature, is not in any way personally interested in the matter before it. It is regarded by our law as of the greatest importance that the administration of justice should be above any possible suspicion of bias. As the Lord Chief Justice said in R. *v.* Hurst (1924) 1 K.B. 256, "Justice should not only be done, but be manifestly and undoubtedly seen to be done". It has even been laid down by high authority that it is

as important that justice should seem to be done as that it should be done.

The last great principle which must be noticed is that ignorance of the law is not a defence. This may sometimes seem to be a hard rule, but even a moment's consideration shows it to be necessary. In these days of innumerable regulations having the force of law it may, however, in the near future have to be modified in quasi-criminal cases.

II. Courts

Broadly speaking, persons accused of crime are tried at the Central Criminal Court, known as the Old Bailey, at Assizes, Quarter Sessions, or before magistrates at what is usually called the police court.

The Central Criminal Court is a branch of the High Court of Justice, and is usually presided over by the Recorder or the Common Sergeant, but a High Court Judge attends to try charges of murder and other serious crimes. It deals primarily with offences committed in London and the surrounding districts.

Assizes are held twice a year at least, usually at county towns, for all parts of England except the area covered by the Central Criminal Court. Assize Courts are usually presided over by High Court Judges, although sometimes a King's Counsel is appointed as a Special Commissioner. Civil as well as criminal business is dealt with at Assizes. Judges of the High Court are appointed by the Crown at the instance of both Houses of Parliament. The absolute independence of the judges is agreed by all parties to be essential.

Quarter Sessions consists, in the counties, of ordinary magistrates sitting four times a year to try certain more serious offences than those dealt with by the Courts of Summary Jurisdiction. County Quarter Sessions may be, and often are, presided over by a

lay magistrate. Many boroughs have their own court of Quarter Sessions which is held by a Recorder, who is always a barrister and is the sole Judge.

At the Central Criminal Court, at Assizes, and at both county and borough Quarter Sessions, the accused is always tried by a jury as well as by a judge, recorder or magistrates.

Justices of the Peace, usually called magistrates, are appointed by the Crown on the recommendation of the Lord Chancellor, who in turn receives names from the Lords Lieutenant of the counties. Local Advisory Committees are appointed both for the boroughs and the counties, whose duty it is to submit suitable names, in the case of counties, to the Lord Lieutenant and in the boroughs direct to the Lord Chancellor. In addition there are certain ex-officio magistrates, such as mayors and chairmen of Urban and District Councils. Justices of the Peace need not have any legal knowledge whatever. The only qualification required is residence in, or within seven miles of, the county or borough for which they are to be appointed, or in the case of a borough occupation of property within it.

Petty Sessions is a court of two or more magistrates sitting in a duly appointed court-house. A Court of Summary Jurisdiction includes Petty Sessions and also a justice sitting alone, which for certain purposes he may do. Ordinary magistrates are unpaid, but there are also Stipendiary Magistrates and Metropolitan Police Magistrates, who receive salaries. Both Stipendiaries and Metropolitan Police Magistrates are appointed by the Crown on the recommendation of the Home Secretary, and must be barristers of seven years' standing, or five years in the case of Urban Districts. The Councils of Boroughs or Urban Districts can apply to the Home Secretary for the appointment of stipendiaries.

The Clerk to the Justices is appointed by the magistrates. He must be a barrister of not less than

fourteen years' standing, a solicitor, or have served seven years as clerk to a stipendiary or police magistrate. In special cases an unqualified person with fourteen years' experience as, or as assistant to, a Justices' Clerk may be appointed. The Clerk, in addition to keeping all registers, records, and accounts, advises the magistrates on points of law and procedure. His salary is fixed by the justices in boroughs and by the Standing Joint Committee of the County Council and Quarter Sessions in counties, subject in either case to an appeal to the Home Secretary, and is paid by the local authority. The Clerk may be, and more often than not is, in private practice, although he is not allowed to appear before his own bench.

Magistrates, in addition to their criminal work, deal with many civil matters.

The Court of Criminal Appeal is a superior court of appeal in criminal cases. When constituted to deal with an appeal it consists of an uneven number of judges of the King's Bench Division of the High Court, not less than three, presided over by the Lord Chief Justice, or in his absence the senior judge who sits.

The Coroner's Court is held to inquire into the cause of death in cases where foul play is reasonably suspected, or where there is a sudden death from an unknown cause, or where in any other case the law so requires. A Coroner has other duties, but they do not concern us here. Coroners are appointed by County or Borough Councils. Since 1927 the qualification required has been that of a barrister, solicitor, or legally qualified medical practitioner of not less than five years' standing. A Coroner sits with a jury if there is reason to suspect murder, manslaughter, or infanticide, and in cases of deaths in prison, and most other cases of death by accident or in circumstances affecting the general public, but in other cases he may dispense with a jury.

The County Court, which is a civil court presided over by a judge, must be mentioned, for it commits a large number of persons to prison every year in connection with non-payment of debts.

Generally speaking solicitors, barristers, and the actual parties in person are the only persons entitled to be heard in the courts otherwise than as witnesses. At Assizes and the Central Criminal Court, and before the Court of Criminal Appeal, barristers alone have a right of audience as advocates. At Quarter Sessions barristers usually have the sole right of audience, but in exceptional cases solicitors are sometimes heard. Before the magistrates and in the County Courts barristers and solicitors have equal rights of audience. No other persons except the parties in person and certain officials can be heard except by special leave of the court.

For civil cases the highest court is the House of Lords, which means in practice certain legal members of the House, and in addition there are the Court of Appeal, the Chancery, King's Bench, and Probate Divorce and Admiralty Divisions of the High Court (including Assizes), the County Court, and for certain purposes the magistrates at Quarter Sessions and otherwise, and a number of petty local courts of small importance.

Bankruptcy matters are dealt with by the High Court and the County Court.

III. Procedure

The working of our legal machinery can, for present purposes, best be explained by examples. Let us take cases of assault, of theft, of burglary, and of murder. The various courts and persons dealing with the accused and the procedure which is followed can be considered in relation to typical instances.

A person who is assaulted may take either criminal

proceedings or a civil action for damages. If he decides on the first course the assault can be dealt with by the magistrates in the exercise of their summary jurisdiction. The complainant goes to the Magistrates' Clerk's Office and issues a summons. This is a form of notice, usually partly written and partly printed or typed, signed by a magistrate, setting out the offence, and requiring the accused to whom it is directed to attend at a certain time before a Magistrates' Court to answer the charge. The procedure on the issue of a summons varies in different courts, but in any case it has to be served, a reasonable time before the hearing, either personally upon the person to whom it is addressed, or by leaving it for him at the place where he lives. If the defendant appears on the day of hearing, the case is dealt with. If the defendant does not appear, then upon proof of service the case can be dealt with in his absence, or a warrant for his arrest, to bring him before the court, can be issued. If the complainant does not appear the case will usually, but not necessarily, be dismissed.

Magistrates' Courts, usually called police courts, vary very widely in their furniture and equipment. Generally speaking, however, the magistrates sit on a raised platform or bench at one end of the room with their clerk just below them at a table or a desk. There is always a table, on one side of which sit the police, and in front and at the other side the advocates and the police court missioner. In many courts there is a dock for prisoners, and witness boxes. In others, the prisoners, prosecutors, defendants, and witnesses merely stand or sit behind the advocates or at the sides of the advocates' table. The Press usually have a desk or table at one side, and the main body of the court room is occupied by persons in waiting and the general public.

The defendant's name having been called, he is told by the Chairman or the Magistrates' Clerk that

he is charged with assaulting the complainant, and asked whether he has any cause to show why he should not be convicted. In practice he is usually asked whether he pleads guilty or not. If he admits the offence the magistrates hear some evidence as to what happened, the defendant is convicted, inquiry is made from the police as to previous convictions, and he is sentenced, or, if the bench think fit, bound over to keep the peace.

If the defendant contests the charge, the complainant's advocate, if any, outlines the facts, which is called " opening " the case, or the complainant himself does so on oath so far as the facts are within his knowledge. The complainant's witnesses are then called, sworn, and examined, the defendant or his advocate having the right to cross-examine, or ask questions to discredit the complainant's case or get the witnesses to admit the defendant's version. After cross-examination a witness can be re-examined with a view to explaining any admissions made in cross-examination. On the close of the complainant's case, if the Court think there is a case to answer, the defendant is asked whether he wishes to say anything. He can make a statement not on oath which will not be evidence and on which he cannot be cross-examined, or he can be sworn and give evidence in his defence in the usual way. He can also call witnesses. If he is legally represented his advocate will speak for him but not of course give evidence. The Court can ask what questions it chooses, and usually does so through the Chairman or Clerk. A defendant who has not elected to give evidence must not be questioned—a rule often ignored. At the close of the defendant's case the magistrates consider their decision, and either convict or sentence the defendant, bind him over, or dismiss the charge. The maximum penalty for common assault is two months' imprisonment or a fine of £5. Before pronouncing sentence

the magistrates usually ask the police whether anything is known of the defendant. A person convicted has a right of appeal to Quarter Sessions.

In an ordinary case of theft, legally described as simple larceny, the proceedings can only be criminal, and they may be commenced either by summons or warrant, or the accused may have been arrested without a warrant. The defendant is in the first place brought before the magistrates. Simple larceny can be tried by the magistrates summarily with the consent of the accused. If at any stage during the hearing of the charge the magistrates become satisfied that the case should be dealt with summarily they may read the charge to the accused and ask him whether he desires to be tried by a jury or consents to the case being dealt with summarily, explaining what this means if the Court thinks it desirable for the information of the accused. If the accused consents to be tried summarily, he is asked whether he pleads guilty or not guilty, and the trial proceeds in manner similar to that outlined in the case of an assault. We shall see later how this provision for summary trial by consent works out in practice.

If the case is not dealt with summarily the magistrates proceed, not to try the accused, but to inquire whether he ought to be committed for trial at Assizes or Quarter Sessions. The charge is read over, but the accused is not asked whether he is guilty or not guilty. The case for the prosecution is usually outlined by the prosecuting counsel or solicitor, if any, and the witnesses are called, examined, and cross-examined. The statements made by the witnesses are taken down in writing by the Magistrates' Clerk in the presence of the magistrates and the accused. These statements are called depositions, and should be read over to the witness and signed by him as soon as he has given evidence and in the presence of the accused. The depositions should also be signed by

a justice, and the witnesses bound over in due course to attend the trial.

When the case for the prosecution is concluded the Chairman of the Bench reads the charge to the accused, explains its nature to him, and tells him that he has the right to call witnesses, and, if he wishes, to give evidence on his own behalf. He is then asked if he wishes to say anything in answer to the charge, and told that he is not obliged to say anything unless he desires to do so, but whatever he says will be taken down in writing and may be given in evidence at his trial. It should be further explained to him clearly that he has nothing to hope from any promise and nothing to fear from any threat which may have been held out to him to induce any admission or confession of guilt, but that whatever he then says may be given in evidence on his trial notwithstanding the promise or threat.

After this formality the accused is asked whether he desires to give evidence and to call witnesses. If the accused alone gives evidence it is taken at once, and afterwards his solicitor or counsel addresses the Court. If witnesses other than the accused are called the advocate addresses the Court before calling them. The statement of the accused and his witnesses, other than statements merely as to character, are taken down in writing, read over and signed in the same way as the depositions of the witnesses for the prosecution.

The magistrates then decide whether they will commit the prisoner for trial or not. If they think a prima facie case has not been made out, or that it is probable that no jury would convict, they should discharge the accused. If they are of the opinion that the evidence is sufficient, or raises a presumption of guilt, they should commit him for trial at Quarter Sessions or Assizes. The accused may either be committed to prison to await trial or be admitted to bail.

In a case of simple larceny the accused will probably be commited for trial at Quarter Sessions. The depositions are transmitted by the Magistrates' Clerk to the proper officer of the court of trial, and, assuming that the accused is committed to Quarter Sessions, the prisoner, as he is now called, in due course appears in the dock to face his trial. Before he is tried, what is called an indictment must be presented by the Grand Jury. There are many technicalities connected with indictments, but for present purposes it is sufficient to explain that it is a written accusation, charging a person or persons with a crime, presented to and found by a Grand Jury. This jury consists of not less than twelve nor more than twenty-three highly respectable citizens of the county where the crime was committed. After this jury is sworn, the Recorder or Chairman explains to them the bills of indictment they have to consider, and then they retire to hear the evidence on oath of the witnesses for the prosecution. If a majority of the Grand Jury think there is enough evidence in support of the charge they find " A True Bill ", and if not " No True Bill ". In the latter event the prisoner is discharged, but not necessarily so until the Grand Jury are themselves discharged, as the bill of indictment may, by the direction of the Judge, be preferred again.

If the Grand Jury find a true bill the accused appears in the dock, the indictment is read over to him, and he is asked whether he is guilty or not guilty. If he pleads guilty the only point of importance to be noted is that this is an admission of guilt so far as concerns the offence charged, but not necessarily an admission of the facts stated in the depositions. If the plea is " Not Guilty " a jury of twelve persons, called the Petty Jury, is called, and if not objected to, is sworn. Both prosecution and defence may object to, or " challenge ", jurors. Everyone charged with serious crime has a right to be tried by

a jury, which may consist of practically any men or women over twenty-one and under sixty, subject to certain exceptions and exemptions.

Counsel for the prosecution then opens the case, and calls witnesses, who are examined, cross-examined, and re-examined. The prosecution may call witnesses who did not give evidence before the committing magistrates, but if they do so previous notice should be given to the defendant, with copies of the proofs of evidence. Under certain circumstances, such as the death or serious illness of a witness, his deposition may be read as evidence. After his witnesses have given evidence, the prosecuting counsel puts in the statement, if any, made by the defendant before the magistrates and closes his case.

Counsel for the defence, or the prisoner in person, may then submit that there is no case to go to the jury, and if the Recorder or Chairman agrees, there is an end of the case. Failing this the defendant gives evidence at once, if he is the only witness, and is liable to cross-examination in the usual way. After his evidence has been given, the prosecuting counsel may, if counsel appears for the defence, sum up the evidence for the prosecution. He may also do this if no witnesses are called for the defence. Defending counsel, if he calls no witnesses other than the accused, then addresses the jury, and has the last word unless the Attorney-General or Solicitor-General is appearing for the prosecution.

If there are witnesses for the defence other than the accused, counsel for the defence opens his case and calls his witnesses, who give their evidence in the usual way. After this, rebutting evidence may sometimes be given by the prosecution if some unexpected matter has arisen, and then, or after the close of the evidence for the defence, the defending counsel sums up, counsel for the prosecution having the right of reply.

The Recorder or Chairman sums up the whole case to the jury, and directs them as to the law, and he, but not the prosecuting counsel, may comment on the failure of the accused to give evidence. Since 1898 the defendant has been allowed to give evidence on his own behalf, but he cannot be compelled to do so.

The Clerk of the Court directs the jury to consider their verdict and, if they are agreed, they return a verdict of "Guilty" or "Not Guilty" through their foreman. If the jury cannot agree on a unanimous verdict they may be discharged, but the accused may be tried again.

If the verdict is "Not Guilty" the defendant is immediately discharged, if "Guilty", the Court proceeds to sentence the accused, after inquiring from the police what is known about him, and also considering what the prisoner has to say.

The maximum punishment for simple larceny is, on summary conviction by the magistrates, six months' imprisonment, and after trial at Assizes or Quarter Sessions, five years' penal servitude.

Burglary is breaking into a dwelling-house at night (i.e. between 9 p.m. and 6 a.m.) with intent to commit a felony, or breaking out under similar circumstances. There are very many technical points in connection with this as with most other crimes. Burglary cannot be dealt with summarily by magistrates at the police court, but a person charged therewith must be committed to Quarter Sessions or Assizes, if the justices think the evidence sufficient. The procedure as to commitment, trial, and sentence is similar to that outlined in the case of larceny, but serious cases of burglary should be committed to Assizes. The maximum punishment for burglary is penal servitude for life or two years' imprisonment.

Murder is unlawful killing by one human being of another with malice aforethought. A charge of

murder can only be tried at Assizes, including the Central Criminal Court. Incidentally, death must ensue within a year and a day of the injury being inflicted, otherwise a charge of murder or manslaughter cannot be supported.

The procedure in the case of murder is, generally speaking, similar to that in burglary, but the matter may come before the Coroner's Court as well as the Magistrates' in its earlier stages. The punishment for murder is death.

The decisions of the Courts referred to are subject to various appeals in criminal cases. From the decision of the magistrates in the police court there is an appeal to Quarter Sessions, and in certain instances to the High Court on a point of law. From the decisions of Quarter Sessions and Assizes there is an appeal to the Court of Criminal Appeal. The question of Appeal is dealt with fully in a subsequent chapter.

A person charged with a crime is said to be remanded when the hearing of the case against him is adjourned for some cause. A remand in custody cannot be for more than eight clear days. This prevents anyone being kept secretly and indefinitely in prison without trial.

Bail is a security taken from the accused, or the accused and a surety or sureties, to guarantee his appearance in due course to answer to the charge against him. It is based on the great principle of the presumption of innocence, and is intended to prevent untried persons being imprisoned.

Common law is the law based upon ancient custom, interpreted from time to time by the decisions of the judges, and recorded in various ways. Statute law is made by Parliament and contained in Acts of Parliament. These Acts are also when necessary interpreted by judicial decisions. In addition there are innumerable regulations having the force of law

made by Government departments under Statutory authority.

This outline is necessarily incomplete, and is only intended to enable the reader to understand what is said later. Our criminal law and procedure is highly technical, and in some ways obsolete. It is fair to say, however, that its technicalities are, on the whole, of more use to the defence than to the prosecution, except in the case of appeals.

CHAPTER II

MAGISTRATES

What They Are

We know what Shakespeare thought about magistrates. Robert Shallow, a Gloucestershire J.P., is obviously meant to be typical of his class. It is likely enough that Shakespeare, like many others, had personal experience of the peculiarities of justices' justice, but there is no more reason to think that the portrait of Shallow was drawn in spiteful revenge for a personal injury than to suppose that Ann Hathaway must have been slandered by a contemporary Iago. Dickens, too, knew what magistrates were like, and so did Thackeray. It is probable, however, that in all the six centuries or more of their existence justices of the peace have seldom been worse than they are now.

What can be expected? Formerly the property qualification, as well as custom, ensured that justices were appointed from the upper and middle classes. The squire, the retired officer of the Navy or Army, the wealthy manufacturer, and the professional man in some cases, formed, during the latter half of the nineteenth century, the backbone of the bench. They were very far from perfect, but they had at least a considerable experience in dealing with men and weighing evidence. Their social standing made them in most cases unapproachable by those who came before them, and, though they were almost always Conservatives, their Conservatism was usually merely

incidental to their social position. They were comparatively seldom active party workers. A poacher in the country, or a workman against an employer in the towns, would have to face strong prejudice on the bench, but in other cases the balance was evenly, if sometimes incompetently, held. Punishments were often absurd enough, as reference to the files of *Truth* will show, but the jurisdiction of the " Police Courts " was nothing like so wide as it is now. There was a greater sense of responsibility and respect for the law among magistrates a generation or two ago than there is now, and the courts were far less influenced by the police. The clerk, too, seldom dominated the court as he usually does at the present time. He was formerly as a rule the social inferior, as he is now usually the superior, of his justices.

Now things have changed. Constant attacks on the predominantly Conservative complexion of the bench led to the matter being freely raised in the House of Commons, and ultimately to a Royal Commission on the Appointment of Justices in 1910. Advisory Committees were formed as a result of the recommendations of the Royal Commission, and for the last twenty years efforts have been made to redress the disproportionate representation of the three great parties on the bench. These changes have been almost entirely for the worse. The party organisations have fought hard to get their representatives on the Advisory Committees, and failing this, to bring pressure to bear to get the names they proposed sent forward to the Lords Lieutenant. The scheming and wire-pulling that goes on in connection with the Advisory Committees can only be comprehended by those who have either served on one of these bodies or worked to get a nominee appointed thereon.

As a result a seat on the bench has become a reward for political services; almost the only reward, and certainly the only cheap one, now available. Candi-

dature for the House of Commons, successful and unsuccessful, has often been said to have been, not perhaps the only, but sometimes an important, qualification for minor judicial appointments, and occasionally even for higher ones. For the Chairman of a Ward, the Member of a Party Executive, the Party candidate for a town or county council, or the minor subscriber to political funds, the reward, if any, is the letters " J.P." after his name. At the time this is written the most recent appointment of magistrates has been for a certain city. Six were appointed, three Conservatives and three Labour men, and all had been active party workers, and it was their party record that was mentioned in the local papers when their appointment was announced.

All these men may have possessed other qualifications for the bench, but it was obvious what the Press thought were important.

Active work as a political partisan is the worst possible training for a judicial position. In addition, a strong party man is always liable to be suspected of bias on the bench. Yet it is from this class that Justices of the Peace have during the last twenty years been mainly recruited. It cannot be denied that definite attempts have been made to equalise party strength on the magisterial bench. Figures as to the relative strength of the parties have, I think, been quoted in the House of Commons. Certainly they have been given on party platforms.

The Lord Chancellor, speaking at a recent meeting of the Magistrates' Association, condemned the view that the office of magistrate is one suitable to be conferred upon a person as a reward for services rendered, whether political or otherwise. It is certain that Lord Sankey has done what he can to bring about improvement, but the harm has been done. The truth as to the appointment of magistrates is known to far too great a number of persons for it to

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be hushed up. In many places there is not the slightest attempt at concealment among those concerned. A certain magistrate in a provincial town mentioned to the Chairman of an Advisory Committee, a prominent politician, some names he thought suitable for consideration. The Chairman agreed that the persons suggested might be suitable, but said they were too young, explaining that if men of forty or so were appointed it would be much too long before further vacancies arose. The same gentleman, who is nearer eighty than seventy years of age, sat the other day as Chairman of a bench of nine, only one of whom was under sixty, and most of whom considerably exceeded that age.

Ridicule has been thrown on juries and jurymen and the perversity of their verdicts. What would be expected of a jury, most of whom were too old to be put on an ordinary jury panel, and which included great numbers of strong political partisans? Would such a jury be thought a proper tribunal to try men for serious offences, especially if this hypothetical jury were to control the entire trial themselves without the direction of a judge? It is true that magistrates have a clerk, but his advice, even if asked and given, can be ignored. Yet a tribunal of this kind can inflict sentences of six months' imprisonment, and to appeal from its decisions is both difficult and costly.

It is sometimes argued that magistrates have an advantage over jurymen in their greater experience. Those who think experience makes magistrates wise are misled by proverbial analogy. As a rule after a few months or years upon the bench a magistrate tends to become both callous and careless. This tendency is strengthened by the large benches which are now usual. When two or three are sitting they generally pay some attention to what is going on. But benches of five to seven or more are now quite common, and the justices farthest from the Chairman become as a

rule mere ciphers. It is hard work paying attention to a series of apparently, and often actually, meaningless questions and answers, and the average magistrate soon gives it up. I was in a certain court a few months ago when a man in receipt of 15s. 3d. a week unemployment pay was sent to prison because he had failed to pay £1 a week. The bench in question was a particularly good one, and I asked one of the justices afterwards why they had committed the man. At first he attempted to defend their action, but, being an honest man, he afterwards admitted that he had paid no attention to the case, and had taken the committal as a matter of routine. From what I have seen and heard this attitude is the rule rather than the exception in cases of failure to pay, whether it be fines, maintenance orders, or rates.

This question of age is a serious one in all courts where punishment is inflicted and where the personal equation varies much in the consideration of evidence. Old men, naturally enough, lack sympathy and understanding in dealing with manners and customs and an attitude towards life with which they have no personal acquaintance. Can youths or girls of, say, eighteen to twenty-three be said to be tried by their peers when they come before a bench of white-whiskered ancients of sixty or seventy years of age? Old men tend to be cruel, for definite psychological reasons. They do not all become cruel, of course, for many men and women remain young by retaining interest and sympathy, and others deliberately guard against the tendency they know to exist. But generally speaking, the older the magistrate the more merciless he or she is. Everyone who is familiar with the police courts must know the veteran who never misses an opportunity of advising the father of some trembling lad to " take him home and give him a good thrashing ". Old men, too, are usually biased in favour of the prosecution. Law and order, the settled

state of things, is vastly important to them in a way younger people can hardly realise, and they regard the breaker of laws with horror. The presumption of innocence goes for little in the police courts, and for the old man on the bench the prisoner in the dock is an enemy of the human race.

For dealing with questions of pure law there are advantages in age. Experience, and a certain cold clearness of thought, come with advancing years. Anyone who has seen Mr. Justice Avory at over eighty years of age dealing with a point of law will appreciate this. But Justices of the Peace have no training in the law, except by chance, and questions of pure law come before them very seldom indeed, and then only on the way to a higher court as a rule.

We see, therefore, that the wrong type of man is on the bench, largely for reasons connected with party politics. It may be noted that in the reign of Queen Anne the appointment of Justices of the Peace for party reasons caused resentment and discontent, and there was similar trouble in the reign of James II. (See Trevelyan's *Blenheim* and Tanner's *English Constitutional Conflicts of the Seventeenth Century*.)

We are apt to denounce the influence, alleged to exist in the United States, of politics upon the administration of the criminal law. But in America judges, magistrates, and officials have to be elected periodically, which has some advantages as well as many disadvantages. Here they are on for life, for practical purposes, unless they happen to become bankrupt. Whether our magisterial system could long survive criticism as free from fear of the law of libel as that which the American Press bestows upon its own judiciary is an interesting question.

There is, of course, a difference between town and country benches. In the towns the appearance of justice is, as a rule, much better preserved than in the country, but it is doubtful if things are really much

better. Worst of all are the benches in the urban districts and the little manufacturing towns where there are few men of either wealth or standing. Many motorists have experienced the peculiar brand of justice dealt out in such places.

It is not suggested that there are not many excellent benches of magistrates. In some remote counties, in particular, magistrates are to be found who try each case with the utmost care and sympathy and spare neither time nor trouble to do justice. I have in mind, too, a small provincial town where the justices show, every Monday, how the law ought to be administered. But even if there were a small proportion of bad or incompetent magistrates it would be a serious matter. And it is probable that the majority deserve to be condemned.

In treating of the Magistrates' Courts it is arguable that the Clerk should have been first dealt with, for in most courts he is an exceedingly important person. He provides a good example of the evil effects of power without responsibility. Every one with police court experience knows courts where for practical purposes no one but the Clerk matters at all. He interrupts every one, snubs his own chairman, bullies the witnesses, quarrels with the advocates, and wastes more time than he saves by hurrying everything on as fast as possible. Another variety sits quietly throughout the proceedings, never intervening to prevent any sort of irregularity unless directly appealed to or unless likely to cause trouble for himself. Long experience tends to drive most clerks into one or other of these classes. The absence of power to enforce his views on his magistrates, even when appealed to by them, prevents even a good clerk from doing much to improve his bench unless he is a man of strong personality. He can almost always, however, wield very considerable influence if he chooses, owing to the low social standing and entire ignorance

of the law of most magistrates. The Clerk has another great advantage in the fact that he takes the official notes of evidence, whether for the depositions or otherwise. Sometimes the magistrates, or some of them, also take notes, but in practice the Clerk's are the only notes that matter. Their accuracy and extent vary immensely, partly in accordance with the practice of the particular clerk, but even more according to the nearness of the luncheon hour. In cases where there is a possibility of an appeal it is quite usual to hear a continuous wrangle between the defending solicitor or counsel and the Clerk as to what should go on the notes.

The worst feature of the Clerk's position from the public point of view is that he is in the majority of courts a solicitor in private practice. He is not, of course, allowed to practise in his own court. But the persons who appear before the magistrates he advises may be, and often are, his own clients, as also may be those same magistrates. The Clerk cannot legally sit in connection with the trial of a case in the subject-matter of which he is or has been professionally interested (see R. *v.* Sussex Justices, L.R. 1924, 1 K.B.D. 256, and R. *v.* Essex Justices, L.R. 1927, 2 K.B.D. 475). It is easy, however, to imagine the feelings of say, a tenant or a miner, who comes before a court knowing that the landlord or colliery on the other side has for years been an important client of the Magistrates' Clerk. Without even suggesting bias on the part of the Clerk, it is obvious that such a state of things is not in accordance with the principle that it is important, not only that justice should be done, but manifestly and undoubtedly appear to be done. The view taken of the position by the ordinary person is notorious. Unscrupulous people who think they may need a friend at court hasten to bring business to the office of the Clerk to the Justices. It is almost impossible to see how such work can be refused by a

practising solicitor. I know one Magistrates' Clerk who refuses to do licensing work for breweries. I do not think his objection extends to conveyancing. But there are many others who are not so scrupulous. It is a state of things that has only to be made known to be condemned. It is impossible even to imagine a High Court Judge in private practice, under whatever safeguards. Solicitors are not usually regarded as so far above the possibility of suspicion that precautions necessary for judges are needless for them.

Magistrates' Clerks and their assistants, remaining as they do permanently with the same court, naturally tend to close connection with the police. What can be more natural than for a police official, whether Chief Constable, Superintendent, or Inspector, to drop in at the Clerk's office to discuss a doubtful point of law or of evidence in connection with a charge to be made; and what would one give for the chances of the advocate who, on a subsequent occasion, endeavours to convince the bench that the prosecution's view of the aforesaid point is mistaken. So close does the relationship between the police station and the Clerk's office often become that magistrates, not unnaturally, sometimes imagine them to be the same department. A friend of mine once expostulated with a magistrate of his acquaintance after a particularly glaring motor case where uncorroborated police testimony had been accepted against circumstantial as well as independent evidence. "There may be something in what you say," replied the magistrate, "but surely you realise that we must support our own officers?" It is not unusual, nor perhaps surprising, to find Magistrates' Clerks acting for the police in prosecutions in districts adjoining their own. The week this was written a vacancy in connection with a provincial court was filled. The local paper noted with regard to the solicitor appointed: "For some time he has appeared for the police in the

police courts over a wide area." He has continued to prosecute for the police, and in the court he now serves and in which he used to appear for the police, another Magistrates' Clerk for a neighbouring district now prosecutes.

It is often argued, for example in the Report of the Royal Commission on Licensing, paragraph 642, that if clerks were forbidden private practice the salaries would be insufficient to attract the best men. There is little or nothing in this point. There are many courts which are already served by whole-time men, who are certainly not inferior in any way to their part-time colleagues, and by grouping the smaller country courts it would be easy to provide adequate salaries without increased expense. This process is already at work with regard to Medical Officers of Health under the Local Government Act of 1929, and it is hard to see why doctors should be regarded as more liable to outside influences than solicitors. Even the Licensing Commission say, in paragraph 641 of their Report: "We were informed that it sometimes happens that a clerk may be called upon to advise his bench in respect of applications by a person for whom the clerk has acted in his private capacity in an adjoining district. It was not suggested that, in modern times at any rate, this has led to any miscarriage of justice. Even so, however, the position of a clerk in such circumstances is invidious in the extreme, and bound to create an unfortunate impression on the public mind."

How on earth the Licensing Commission could have thought it possible they would be told of any "miscarriage of justice" it is hard to imagine. In whose interest do they think it could be to give such a thing away?

Another point which is taken is that general practice saves a Magistrates' Clerk from becoming a hidebound official, and that, by giving an insight into

police methods, it prevents him from attaching undue importance to their evidence. There is something in this, but not enough to counterbalance the disadvantages.

Stipendiary magistrates are not numerous. The main thing to be said against them is that little care is taken to select suitable men. Mostly they are too old, sometimes they receive appointments as a reward for political services, and apparently no one troubles to see that their previous experience has been of the right kind. For instance, a more than middle-aged conveyancer was not long ago appointed to serve a populous industrial district. In practice, stipendiaries tend to rush their work, especially in London. It will be unfortunate if the evils of the existing system of an unpaid magistracy lead to its being swept away in favour of stipendiaries.

For many centuries, as we have seen, the administration of English criminal justice has been founded upon the magisterial system. The vast majority of criminal offences are tried by the justices. Practically all offences come before them in the first instance. In addition they have a very wide civil jurisdiction with regard to matrimonial matters, affiliation, adoption and custody of children, housing, payment of rates, landlord and tenant, employer and workmen, licensing, refreshment and recreation of all kinds, and almost everything which affects the ordinary citizen in his relation with the law.

Yet the men and women who exercise this enormously important jurisdiction are chosen from those who are likely to have strong prejudices and to lack judicial qualities. They are usually appointed at an age when they are losing sympathetic understanding and are incapable of profiting by experience. They are advised, if they care to ask for advice, by a clerk who is likely enough to have been professionally employed in other matters by one or both of the

parties before them. They are brought up in the tradition of " supporting the police ". Do the people who scoff at the verdicts of juries realise that the magistrates are as a rule inferior in judicial qualities to the average jury, and in addition lack the direction of a judge ?

And from the decision of a court so constituted it is almost impossible to appeal.

What They Do

Nearly eight times as many men and women were in 1929 sent to prison for crime by the magistrates as were committed by all other courts put together. Cases where imprisonment is inflicted form but a minute fraction of those tried before the Courts of Summary Jurisdiction. In addition to this the number of persons sent to prison by the justices for failure to pay under wife maintenance or affiliation orders has nearly doubled in less than twenty years. In the same period the number of committals by the County Courts in connection with non-payment of debt has been nearly halved.

What are the prospects of an innocent man, poor and of no exceptional capacity or courage, who is brought before the magistrates charged by the police with an offence ? I regret to say that over twenty-five years' experience of our police courts has satisfied me that he will probably be convicted. I am trying to write with moderation, but I should say the odds are about four to one on the prosecution before any ordinary bench.

There are several reasons for this. To the bench it is merely, as someone or other said, " the usual man in the usual place ". As a rule, the more experience a magistrate has had, the less he realises that a definite human personality, John Jones or as the case may be, with nerves and fears and inhibitions, is

standing before him. The man or woman in the dock is in utterly unfamiliar surroundings. The accused feels that he is in the grip of some great machine, remorselessly pressing on, giving him no time to think. A poor man is very unlikely to be legally represented if he is innocent. The Poor Prisoners' Defence Act is a farce so far as the police courts are concerned, but a criminal, even if hard up, can generally contrive to be defended. The innocent do not know the ropes.

Alone and friendless as a rule, for the poor endeavour to conceal the fact that they have been "summonsed", the accused hears the evidence for the prosecution reeled off with amazing, and to him confusing speed. More likely than not he is goaded to interject, "That's a lie", or some similar contradiction, while a witness is testifying. Almost invariably he is sharply snubbed, Chairman and Clerk racing to be first with their rebuke. The Chairman then usually remarks that he will not have the court turned into a beargarden, and watches for an opportunity to tell the defendant to take his hands out of his pockets and stand up properly. When the first witness for the prosecution has finished the accused is asked if he wishes to ask any questions. Feeling that at last he can put forward his side of the case he begins to make some sort of statement, and again the Chairman and Clerk hasten to snap, "Ask questions, don't make a speech". Sometimes, by no means always, he is told he can make a statement later. As a rule he subsides, baffled and puzzled. Framing questions in cross-examination is the most difficult part of the work of a skilled professional advocate. It is an impossible task for an ignorant man, confused and frightened by unfamiliar surroundings. Yet every day and everywhere in this country you may hear justices angrily ordering defendants to ask questions.

Even supposing the accused manages to ask a relevant question, he is not allowed to press it but is sharply told he " must take the witness's answer ". This is invariably the case if the witness is a policeman. Any attempt even to suggest the possibility of a mistake on the part of a constable will recoil heavily upon the unfortunate questioner.

I was in court a few years ago when a charge of assaulting the police was heard. The only evidence for the prosecution was that of two policemen. The officer alleged to have been assaulted had given evidence, and the defendant questioned him at some length, to the annoyance of the chairman of the bench, who directed the constable merely to answer yes or no. Immediately afterwards the defendant, a powerful young miner, asked the officer, who was entirely unmarked, " Where did I hit you ? " " Answer Yes or No ", promptly thundered the magistrate. It is hardly necessary to say that the man was in due course convicted, but it may be of interest to add that the defendant went to the bad, while the officer in question was not long afterwards severely censured by a judge at Assizes for unsatisfactory evidence.

Sometimes a kindly Magistrates' Clerk will try to ask a question for the defendant, but this kind of thing is very ineffective without full knowledge of a man's version of the facts. At the end of the case for the prosecution the accused is told he can either make a statement or be sworn and give evidence on oath. The effect of this is to confuse him further. Sometimes an innocent man will turn to sullen silence. Sometimes he is too frightened and confused to do more than stammer out a few words of denial. I remember on one occasion a clerk asked such a man if he had any witnesses. " Witnesses," was the reply, " it don't need no witnesses. I tell ye I warn't there." If a man does give evidence on his own behalf he may as a rule reckon on being cross-examined by the Clerk

as well as by the prosecuting advocate. On one occasion I was in court, and at the close of a rather ineffective cross-examination of the accused by a police official the defending solicitor called another witness. "Wait a moment," cried the Magistrates' Clerk, "while I have a go at him." And he proceeded with a lengthy cross-examination. In this instance the man was to my knowledge guilty. But I have seen the same spirit displayed, though not so openly, in many other cases. The fact that a man makes an unsworn statement does not save him from cross-examination by the bench and their Clerk, and such cross-examination almost invariably creates a hostile atmosphere between the court and the accused. Defendants who have not elected to give evidence are often questioned by the bench and their answers commented upon, although this is quite illegal. It must be remembered that the police in this country seldom or never intentionally prosecute an innocent man, but they easily convince themselves of guilt. For a man to be brought before the court there must necessarily have been some ground for suspicion. There is always that much truth behind the alleged saying of the Chairman of a country bench to a defendant who was making out a case for himself: "Ye must ha' done summat or ye wouldn't ha' been summonsed." It is seldom realised by the justices that the aforesaid "summat" is by no means necessarily the crime of which the man is accused. The presumption of innocence does not exist in the police courts.

So far goes this presumption that anyone who is present must be guilty of something that I have heard the Chairman of a court threaten a prosecutrix that if she ever came there again she stood a good chance of going to prison. The charge was of wilful damage by breaking a window, the accused did not appear, and the case had been heard in his absence.

But the Chairman, who is seventy-five years of age, felt that he must carry out his usual practice and threaten someone. This happened a few months ago.

On the day this was written a husband appeared on the hearing of a summons for separation. He was the defendant, and asked for the summons to be struck out, as he and his wife were living together again. The wife did not appear and the man's statement was confirmed by the Court Missioner. The same aged Chairman sternly told the man he considered it was trifling with the Court to take out a summons and then withdraw it, and he hoped it would be a warning to him. No evidence had been heard, but someone had to be blamed. That it was once again the wrong person did not matter.

I ask the reader to imagine himself or herself, without the help of a solicitor, and without that standing which is given by good clothes and educated speech, in the dock before an unfriendly bench of magistrates. I ask even an experienced barrister or solicitor to recall how he felt just before his first appearance in court, notwithstanding a lengthy training, both theoretical and practical. Then consider how quickly the unfamiliar procedure passes on, how apparently damning statements have to go uncontradicted, how the harsh rebukes from the Clerk and the bench further humiliate one who is already raw with shame at being set apart to be stared at " in the dock ", and you will realise that an innocent undefended man is not likely to do himself justice. And we have seen what qualifications for doing justice is possessed by the court which tries him.

Right judgment as to questions of fact is exceedingly difficult. Anyone with experience of the courts must often have heard High Court judges congratulate themselves on having the assistance of a jury in arriving at the facts. Even did the magistrates constitute a competent court taking adequate time for

the hearing of cases there would be grave risk of the conviction of innocent men unless the rule of the presumption of innocence were always strongly insisted upon. And the contrary presumption is actually in force.

Motorists are almost always legally represented. They, or their insurance companies, have the means to ensure that necessary witnesses are brought to the court, and that proofs of the evidence to be given by them are available for the defending advocates. What proportion of motorists in disputed cases are satisfied with the decision of the magistrates? It can be imagined how an innocent man, unable to pay a lawyer to defend him and incapable of stating his own case, feels when he has been convicted.

That there are likely to be many innocent persons wrongfully convicted seems on the face of it probable. That this actually happens is in a number of cases within my personal knowledge. That it often happens is confirmed by what I have been told by police court advocates, court missioners, and probation officers, and what can be read in books such as Mr. Abinger's *Forty Years at the Bar*. An eminent K.C. told me that in his opinion about a third of the civil cases in which he had been concerned had been wrongly decided, and added that he saw no reason to suppose that a bench of magistrates was more likely to be right than the High Court.

It is often said that in the majority of cases before the Courts of Summary Jurisdiction the defendant pleads guilty, and therefore the question of the competence of the magistrates is not one of great importance, as only a comparatively small number is affected. Such a point of view is hard to understand. There are about a hundred murders committed yearly in this country, but we make far more fuss about it than they do in Chicago, where such a number would pass unnoticed. The conviction of even one innocent

person is a crime committed by the State, for which we are all of us responsible. The fact that it remains unrealised by the general public does not diminish or excuse a crime. Those who have no sense of abstract justice may be reminded of the very large number of cases where the defendant pleads not guilty, and of the fact that nothing undermines the safety of the State more than a lack of confidence in the justice of its courts. Few things have done more to strengthen the Communist party than the exhibitions of bias given by the magistrates in the hearing of cases arising out of the General Strike.

But the plea of guilty is not necessarily conclusive. Many an undefended man pleads guilty because he has been advised to do so by the police, or thinks, rightly enough, that he is pretty sure to be convicted anyhow, and will get a lighter sentence if he pleads guilty. It is unfortunately true that magistrates resent a plea of not guilty. A defended case takes much longer to hear, and the Clerk has to take fuller notes. A very typical case was reported in a provincial paper on 14th August, 1931. Seven men were fined 10s. each for gambling on waste land. They denied that they were gambling, and suggested that the police were merely "making a case". The Chairman is reported to have said: "If you'd been sportsmen and pleaded guilty we might have dealt a little more leniently with you, but you have flatly made out these two policemen to be liars."

On the same day nine other men came before the Court on a similar charge, and it is not surprising that they pleaded guilty. They were fined 2s. 6d. each, the Chairman remarking, "You see that if you own up you get better treatment."

During the week in which these lines were written two men pleaded "Not Guilty" at a certain Quarter Sessions, after having pleaded "Guilty" before the magistrates.

A remarkable case will be found reported in the *Daily Telegraph* of 21st July, 1931, in which the Court of Criminal Appeal quashed a conviction for alleged shop-breaking. At the police court the men raised no defence, and they were alleged to have signed confessions at the police station. Evidence was, however, given before the Court of Criminal Appeal that the men were at the material times in casual wards many miles from the scene of the crime.

There can, unfortunately, be no doubt, except among Royal Commissioners, that a man who pleads guilty gets off with a lighter sentence than if he had pleaded not guilty. This is not due to any question of the commission of perjury, but simply because the bench resent what they consider a waste of time. In view of the odds against the defence it is quite usual for advocates to advise a man to plead guilty, and then in addressing the bench to make a merit of his having done so. I have often enough done it myself, though not in serious cases.

The Chief Metropolitan Magistrate, giving evidence before the Royal Commission on Police Powers and Procedure which reported in 1929, said that unintelligent persons accused of minor offences were surprisingly prone to plead guilty even when they had a good defence in law. With the usual incredulity of Royal Commissions the Report says: "We cannot, however, believe that it is the usual practice for Courts to make any difference in the amount of the sentence, according to whether the prisoner has pleaded guilty or not guilty."

It is exactly this attitude on the part of people like the "Trusty and Well Beloved" ones who compose Royal Commissions that makes those who know the facts despair. It would never have occurred to me, after twenty-five years in the courts, to doubt that the usual practice was other than what I had always seen. As the Chief Metropolitan Magistrate said: "Every

person is entitled to defend himself. It would be a monstrous thing if because he exercised that right you were to give him more punishment." It is a monstrous thing.

It is generally held that magistrates have the right to ask any questions they think fit. This is probably the law, subject to certain exceptions, but it is a right which is greatly abused. Many Chairmen and Magistrates' Clerks are in the habit of cross-examining witnesses at length. It is rarely that they exercise their talents upon the witnesses for the prosecution, but those for the defence, and especially the accused himself, if he gives evidence, receive full measure. Should the unfortunate defendant show any sign of resentment at the assumption of his guilt, or say anything which may be interpreted as a reflection upon the witnesses on the other side, he is sharply rebuked. A common question for a Chairman to ask is, " Are you trying to make out the police to be liars ? "

It is submitted that the proper course for the justices and their clerk to take is to ask only such questions as may be necessary to clear up any discrepancy or doubt which may appear to them to exist, and that anything approaching cross-examination should be carefully avoided. What may be safe for an experienced High Court Judge may be very undesirable for magistrates. So far do some Courts go in the exercise of what they consider their technical rights that I have more than once, and in more than one court, known an advocate refused permission to re-examine after a lengthy series of questions by a Magistrates' Clerk. It is also a common practice in some courts closely to question a defendant on a statement made not on oath, although the prosecution could not do so, and for the bench to do so, except to clear up obscurities, is probably illegal.

When the evidence has been heard it has become a general practice for the justices to retire with their

clerk if they have any doubt as to either their decision or the sentence. This retirement of course adds considerably to the power of the clerk, who cannot say very much to his magistrates in open court. Behind the scenes, however, he usually has the principal say in the matter, especially since he, as a rule, is the only one with notes of the evidence. What goes on can only be conjectured and gathered by hearsay. Many magistrates, especially those who fail to get their own way, are inclined to talk, and a good deal of information leaks out. I do not wish to lay undue stress on what cannot be proved, although I have been told some astonishing tales, but this question of retirement is of importance, because it has in itself a bad effect by diminishing the appearance of a trial in open court. It is, by the way, not at all uncommon for a clerk, before retiring, to borrow the proofs of evidence from the police so that he may supplement inadequate notes. It is quite common for the justices and their clerk to be out for twenty minutes to half an hour after the hearing of a case involving no difficult point of law. The average layman supposes that in private things are said which could not be disclosed in open court. Only the magistrates themselves know whether or not this is so. Of my own knowledge I can say that I have on several occasions, after submission had been made that there was no case to answer and the justices had retired for consideration, known the Chairman to announce on his return that the Court had decided to convict. This decision was of course come to before hearing the evidence for the defence. A procedure so apt to arouse suspicion in the public mind should not be adopted except in case of absolute necessity, to avoid an unseemly wrangle.

That innocent men are convicted, frequently or infrequently, by the Courts of Summary Jurisdiction, is the most serious charge that is brought against them.

But it is not the only one. It is of the first importance that a man or woman, even if guilty, should have a fair trial. Even in the nursery any one with experience of children knows how bitterly injustice is resented, and how long the memory of it lasts. The same spirit persists in later life. A company commander during the war told me how once, passing a tent, he heard his own name mentioned to an accompaniment of lurid blasphemy. He could not resist listening, and gathered that he had punished the man who was speaking for overstaying leave, or some other minor offence. "Well," came a second voice, "you done it, didn't you?" "I know I done it, but I'd a damn good tale, and 'e couldn't *know*, the blank, blank, blank." A man who is convicted, even though guilty, merely on suspicion without having the case against him proved, will cherish resentment even more bitterly than will an innocent man. Those who hear the trial, and do not know him to be guilty, will be satisfied that there has been a miscarriage of justice and will lose that confidence in our courts which is essential to security. Worst of all, the admission of irregularities into the trial of a guilty man will infallibly lead to similar things taking place when innocent men come before the Court.

Magistrates are apt to think that their main duty is to convict and punish guilty persons, and that the rules of evidence and procedure which they have sworn to observe are mere red tape, hindering them in their work. Not only do most of them make no attempt to rid their minds of what they know about a case before proceeding to hear it, but they pride themselves on their inside information, and pass it on to their colleagues. This attitude on the part of benches becomes known, and a few years ago there was a case in which it was ingeniously exploited.

In a certain large town there were two race-gangs, one of which was controlled by a man we will call

Jones. These gangs had met and fought on several occasions, and the magistrates were alarmed as to the position. Jones himself, though he had one or two old convictions on his record, never took any active part in these or any other rows, but remained in the background, as he much disliked prison life. It was notorious that the magistrates were longing for an opportunity to get Jones before them, and that he would get short shrift if they did so. Three members of the rival gang conceived a bright idea, and, taking their wives and one or two friends with them to act as witnesses, set forth to the street in which Jones lived. Arrived there, they promptly picked a quarrel with some of Jones' bodyguard who were loafing about, and a very pretty street fight resulted. It was a back street, and even if the police had known of the trouble they wouldn't have bothered to intervene. Jones watched the row from his bedroom window, but took no part in it. The three invaders soon retired, and immediately betook themselves to the office of the Magistrates' Clerk, where they took out summonses for assault, not only against their actual opponents, but also against Jones. When he was served Jones realised how he had been trapped. There were three summonses for assault against him, and, innocent though he was, he had every reason to expect that he would get two months on each. He took the obvious course, and squared, or perhaps I should say compensated, the three prosecutors, at a cost which I afterwards ascertained to be £20. A solicitor, instructed by the prosecutors, but paid by Jones, applied for the withdrawal of the summonses. I was instructed for the defence. As soon as the application for withdrawal was made the Chairman of the bench announced, " Oh no, we can't allow that. The bench know a very great deal about this case already."

He was much astonished at being told that if that was so it was highly improper, as no evidence had

been given. It was only after a long wrangle, however, that the case was permitted to be withdrawn, chiefly because the Clerk was annoyed that the Chairman should have let the cat out of the bag.

It is unfortunate for defendants with previous convictions that in the smaller country courts, and too often even in the towns, their record should almost inevitably be known to the bench. But it is deplorable that some magistrates should go out of their way to find out for themselves information as to cases which are to come before them. I do not know how often this happens, but that it does happen is within my own knowledge. Sometimes a magistrate incautiously gives the position away. For instance, I was once appearing for a man whose case had been adjourned from the previous week, and on my making some submission to the Court the Chairman impressively said, "Let me tell you, sir, we have had a very bad report about your client." He was very angry when I successfully insisted that the case must be tried by another bench.

The other day I successfully defended a man who was charged with assaulting the police. I could see that there was disagreement on the bench, and one of the magistrates, meeting me afterwards in the street, asked what I really thought about the case. I truthfully said I was satisfied the man was innocent. "Ah," said the magistrate, "I very much doubt it. He is living with a woman who is not his wife."

There are magistrates who resent any attempt to tell them about pending cases which may come before them. There are others who welcome such attempts. It cannot be denied that Labour magistrates who are Trade Unionists are definitely expected to attend the court when cases affecting the members of their Union are to be heard, and are called on to explain their absence if they fail to do so. I have seen specific written records of such a case. This kind of

thing is bound to happen when party men are avowedly put on the bench to redress an adverse political balance, but what I refer to goes beyond a question of seeing fair play.

It must often have happened to any advocate of experience that he should strongly suspect members of the bench to have been approached in his favour. As a rule he does not know definitely until after the hearing. Sometimes he is actually told that so-and-so has been seen by his client and will be favourable. The duty of an advocate under such circumstances is hard to define. Theoretically, I suppose, he should retire from the case, but as a rule in police court practice this would mean leaving the defendant without legal representation. In practice, he probably tells his client sharply that he doesn't want to hear anything about that, and hopes for the best. I remember on one occasion having what I thought a very good win in an important licensing prosecution, in which the bench adopted my view of a legal point against the advice of their clerk. Later in the week I was telling a friend of the defendant's about the case, when he spoilt my pleasure by informing me that he was not surprised as two out of the three on the bench had promised to do their best in the matter.

Labour magistrates are especially liable to be approached, not necessarily because their standard is lower than others, but because they live among the class who most frequently come within the jurisdiction of the police courts. Let those magistrates who, themselves of unswerving rectitude, consider it a gross libel even to suggest that justices are approachable, consider how often they themselves have had to repel anxious suitors. Would constant attempts be made to approach even those known to take up the strictest attitude if there were not others of, let us say, easier virtue?

The dislike of magistrates for defended cases has

already been referred to. It is due to several causes. As a rule the number of cases set down for hearing in an ordinary court could not be dealt with during the usual hours if even half of them were disputed. For men who have most of them sought for the position they occupy, magistrates are singularly grudging of their time. There are notorious advantages and disadvantages for the defence in being heard towards the end of a long day. The advantages are two. There is always a chance that a submission on behalf of the defence that there is no case to answer may find a welcome from justices who realise that to accept it will mean getting away an hour or so earlier. The second point is that it is easy to confuse the issue before a tired bench who cannot concentrate attention on the evidence. This, however, is only helpful to a weak defence. Otherwise, it is a severe handicap. A typical instance where it helped the defence occurred a year ago in a country court. I was for the prosecution in a case of assault, and the prosecutrix and her two witnesses gave their evidence clearly and were unshaken in cross-examination. The hour, however, was late, and the Chairman over eighty years of age. His colleagues were also advanced in years. The defence called four witnesses, who told contradictory stories easily torn to pieces in cross-examination. I enjoyed an easy task, and was much surprised when the bench retired to consider their decision. On their return the venerable Chairman announced that the evidence had been so conflicting that they were compelled to dismiss the case. The only conflict had been among the witnesses for the defence.

It is perhaps well at this point to make it clear that the present state of things is definitely to the advantage of the police court advocate. If every Magistrates' Court were presided over by, say, Mr. Justice Avory, there would be no room for police court advocacy of the existing type. It is precisely because of the incom-

petence of the magistrates that the police court advocate flourishes as he does. Many of the tricks he uses would be impossible before any properly constituted court, and the strong element of chance about the decisions enables even the most incompetent of advocates to get what appear to be remarkable successes at times. The majority of police court solicitors would suffer in pocket by the reform of the magistrates.

The speed at which proceedings are conducted in some courts is almost incredible. The London courts provide the worst instances in this respect, but the provinces can show some almost as bad. In April 1932 a certain provincial court dealt with thirty-nine motoring offences in eighty minutes. I have been told that an eminent London Police Magistrate, lecturing to students on the law of evidence, informed them that of course these rules had to be disregarded in the police court owing to want of time. If not true the story is well invented. I remember discussing this question with the Clerk of one of the best-conducted courts I know. He said, "You know as well as I do that if we observed the law strictly we couldn't possibly get through the work." This gentleman's Court sits once a week. Is it supposed that an inferior kind of justice is good enough for the lower classes? There can be no doubt as to what the lower classes themselves think about it. In a certain provincial police court a few years ago the son of a wealthy manufacturer was charged with a minor offence of the "boat race night" type. Mr. Norman Birkett appeared for the defence, and after a long and patient hearing the charge was dismissed. It was not the result of the case which aroused comment among the working classes. It was the difference between the two or three minutes' hearing which would have sufficed for one of them, and the almost respectful attention which was given to the defence in the case in question.

If any one has doubts as to the way in which cases are rushed through in the police courts let him compare the time occupied in investigating similar questions of fact in a motor-car collision case dealt with before the magistrates and in the County Court. The issues are practically the same, and so are the witnesses, but a County Court Judge will as a rule take from twice to thrice the time that the justices do. It is true that contributory negligence is a defence in civil but not in criminal proceedings, but in effect contributory negligence always becomes an issue in the police court as it seriously affects the question of punishment. The amount of damage is very seldom an issue in the County Court. It must always be remembered that motoring cases receive a fuller hearing in the police court than other offences, as motorists are almost invariably represented by experienced counsel or solicitors instructed by insurance companies. Consequently motorists do not receive the short shrift accorded to ordinary offenders. Indeed, a custom is growing up of setting aside special days for the trial of motoring offences. This is exceeding undesirable from the public point of view, however convenient it may be for prosecuting solicitors and defending advocates. It creates the impression that there is differentiation in favour of certain classes of offenders, and it prevents motorists from having an insight into the methods of our Magistrates' Courts. Many a motorist has been shocked by what he saw and heard while waiting for his case to be called on, and the mere presence of counsel and solicitors in court often has a salutary effect. Not long ago a member of the junior bar was moved to rise as *amicus*, or perhaps *hostis*, *curiae* and protest against what he described as " a travesty of justice " in a certain police court.

Another reason for the dislike which magistrates have for defended cases, and especially for those in

which the accused is legally represented, is that a defended case, properly heard, means real hard work for the bench. There are few things more difficult than to maintain careful attention to evidence given by way of question and answer. The difficulty is increased when, as too often happens, the prosecution is conducted by a Chief Constable or Superintendent who does not explain the case by an opening speech, but merely puts witness after witness in the box in apparently aimless sequence. When to this is added the ignorance of the vast majority of justices as to what are the issues involved, and upon whom lies the onus of proof, it is not surprising that magistrates often try to shirk a duty obviously beyond their abilities. The imposition of punishment is a task which, human nature being what it is, does not present much difficulty to the average man. Indeed, it often gives him a sense of superiority and power, which, to the type of man who gets appointed to the bench at the present time, is both novel and pleasing. A large employer of labour once told me that he had asked one of his foremen, who had just been made a magistrate to represent the " Labour " interest, how he had got through his first appearance on the bench. " Oh," was the reply, " I enjoyed it very much. We gave two chaps a month apiece, and fined several others." The foreman in question was a timid little man, notoriously henpecked.

As a result of this dislike for defended cases the Poor Prisoners' Defence Act of 1930 has been almost entirely ineffective, so far as the Magistrates' Courts are concerned. The Act provides that if it appears to a Court of Summary Jurisdiction that the means of any person charged before them with any offence are insufficient to enable him to obtain legal aid, and that by reason of the gravity of the charge or of exceptional circumstances it is desirable that he should have free legal aid in the preparation and conduct of his defence

before them, they *may* grant him a legal aid certificate entitling him to have a solicitor assigned to him free of charge.

The writer tried, through his M.P., to have " shall " substituted for " may " in the clause in question, but the Committee which dealt with the Bill would not even consider the amendment. No statistics appear at present to be available for the country at large, but in a busy provincial court, sitting on four days a week and dealing with several thousand cases yearly, legal aid has been granted in two cases only. In each case it was actually applied for, not granted voluntarily by the magistrates. The court in question shows no reluctance to deal with serious cases. In fact, the frequency with which grave charges are reduced in order that they may be dealt with summarily has been the subject of strong comment by the local Recorder at Quarter Sessions. It may incidentally be remarked that the fees allowed in respect of legal aid are well below the usual charges for police court advocacy.

In fact, of course, many men are defended free of charge, though it is considered bad form for solicitors to reveal the fact. Sometimes this is done for sympathetic reasons, sometimes because the man or woman has been sent in by a friend or client, and sometimes from a dislike of injustice. Many solicitors of my acquaintance have defended men in this way, and I hope to be forgiven for relating the following instance, which aptly illustrates the attitude of the justices towards the Poor Prisoners' Defence Act. The case occurred in January 1932. Two young men, aged respectively twenty-two and twenty, were charged with stealing property valued at £29 8s. They had been remanded in custody from the previous week. I was asked by the councillor representing the ward in which they lived to do what I could for them. After obtaining what instructions I could from ten minutes' talk in the cells I applied to the magistrates

for legal aid to be granted, pointing out the serious nature of the charge and the fact that both men were, and had been for a long time, unemployed. Their families were also in very poor circumstances, the father of one being himself unemployed, while in the other case the father had just got a job after a long period of unemployment, but there was another unemployed son at home. There was no suggestion that the facts were not as stated, but legal aid was at once refused, the Chairman, a wealthy man, adding that the men were in receipt of unemployment benefit. I asked if the Court considered that a man could afford to pay for legal aid out of 15s. 3d. a week, and the reply, given apparently as a considered opinion and without any heat, was "Yes". The case proved a long and difficult one, involving legal technicalities as to the admissibility of certain evidence. Ultimately the cases against both defendants were dismissed. It is hard to imagine a case to which the Poor Prisoners' Defence Act could more obviously be intended to apply. Incidentally, the Clerk conducted a lengthy cross-examination of one of the defendants, and asked him to say why a certain witness for the prosecution had given the evidence he did. Under pressure the accused said he supposed the witness had been "got at". He was immediately sternly rebuked by both Chairman and Clerk for suggesting such a thing. I intervened and pointed out that the accused, having been pressed for an answer, was perfectly entitled to say what he did. I subsequently pointed out, in addressing the bench, that the witness in question having at first given to the prosecutor a version entirely different from that which the police later obtained from him, it was reasonable to suppose that he had been "got at" by someone, not necessarily the police.

An instance, in another court, is worthy of notice. Two men were charged with housebreaking. They

were single men earning good wages. Their relatives were even better off, and brought in a substantial sum when instructing me. There being ample means, counsel was instructed to appear before the committing magistrates. To the surprise and disgust of my common law clerk, the Chairman of the Court, a former secretary of the Trade Union to which the accused belonged, volunteered legal aid without being asked.

Scarlett, the most famous advocate of his day, speaking in the House of Commons on 25th April, 1826, said :

"I have myself often seen persons I thought innocent convicted and the guilty escape for want of some acute and intelligent counsel to show the bearings of the different circumstances on the conduct and situation of the prisoner."

I have not verified the quotation, but take it from Sydney Smith's article, "Counsel for Prisoners", published in the *Edinburgh Review* in 1826. This article, though it deals with the practice, since abolished, of refusing the assistance of counsel to persons accused of felony, is unfortunately still applicable. It is well worth reading. Sydney Smith rightly points out that :

"Of all false and foolish dicta, the most trite and the most absurd is that which asserts that the Judge is counsel for the prisoner."

And he sums up the position in words which I quote because they cannot be improved upon :

"Can anything, then, be more flagrantly and scandalously unjust than, in a long case of circumstantial evidence, to refuse to a prisoner the benefit of counsel ? A foot-mark, a word, a sound, a tool dropped, all gave birth to the most ingenious inferences ; and the counsel for the prosecution is so far from being blamable for entering into all these things that they are all essential to the detection of guilt, and they are

all links in a long and intricate chain: but if a close examination into, and a logical statement of, all these circumstances be necessary for the establishment of guilt, is not the same closeness of reasoning and the same logical statement necessary for the establishment of innocence? If justice cannot be done to society without the intervention of a practised and ingenious mind, who may connect all these links together and make them clear to the apprehension of a jury, can justice be done to the prisoner, unless similar practice and similar ingenuity are employed to detect the flaws of the chain, and to point out the disconnection of the circumstances?"

This was written over a century ago, but it is as much in point as on the day it was written. In many courts the Poor Prisoners' Defence Act is a dead letter. We live in a conservative country.

It is often suggested that general confidence in the magistrates must exist, because defendants almost invariably elect to be dealt with summarily. An illuminating correspondence on this point will be found in the *Week-End Review* for October 1930. The reasons for such elections are well known to all who attend the Courts of Summary Jurisdiction, but confidence in the magistrates is not one of them. Naturally, everyone likes to get his trial over as soon as possible, but this is by no means the only reason. To be defended at Quarter Sessions necessitates briefing counsel, and this costs at least three times as much as to be defended by a solicitor before the magistrates. This expense is in addition to the charges of solicitor or counsel appearing before the Court when the defendant is committed for trial. A further risk for a man who elects to go for trial before a jury at Quarter Sessions is that he may get a heavier sentence for doing so. In a case in 1930 the Chairman of a certain county Quarter Sessions actually told a prisoner in open court that he was

dealt with more severely because he had given so much trouble by electing to come before them when he might have been dealt with summarily. It is not often, of course, that such candour is displayed, but it is not to be supposed that the attitude displayed is unique.

Many, too, are discouraged from exercising their right to a trial by a jury by reading the remarks of judges and recorders censuring the justices for dealing with cases summarily instead of committing them to Assizes or Quarter Sessions where adequate sentences might be imposed.

The following quotation is from the *Birmingham Evening Despatch* of 24th February, 1932:

"Addressing the Grand Jury at Warwick Assizes to-day Mr. Justice Wright said that at some Assizes it had come to his notice that the lightness of the calendar was due to the action of magistrates in dealing summarily with offences which owing to their gravity ought to have been sent either to the Assizes or the Quarter Sessions."

This is one instance of many. Mr. Justice Roche made very similar remarks in January when he took his seat as Chairman of the Oxfordshire Quarter Sessions. The magisterial atmosphere appears to have infected his lordship, if he is correctly reported in the *Daily Telegraph* of 6th January, 1932, as having also said:

"I think magistrates in Petty Sessions should consider carefully when they get a case of dangerous driving, or a case of driving under the influence of liquor, whether they should not send such a person to Quarter Sessions for trial on indictment. For, whatever Quarter Sessions did, it would do a person a great deal of good to have the anxiety of waiting for trial, and to have trial in Quarter Sessions instead of at Petty Sessions."

It does not appear to have occurred to his lordship that the anxiety to which he refers might fall upon an innocent person. So far have even High Court judges gone in abandoning the presumption of innocence.

Another reason, and perhaps the principal one, is that defendants are often bullied by the bench and their clerk into consenting to be tried summarily. It is treated as a matter of course that they will so consent, and if they show any signs of doubt, or even sometimes if they definitely elect to be tried by a jury, it is suggested they will have to wait a long time in prison. In some cases they are definitely told so without mention of bail. It gives the magistrates, and especially their clerk, a great deal more trouble to commit a person for trial than to deal with the case summarily. Depositions have to be taken down, read over and signed, and careful consideration has to be given to the question as to whether there is sufficient evidence. If there is not, or if the depositions are not in order, the justices and their clerk are liable to get their knuckles rapped, not at all an unusual occurrence. In any event, the whole business takes much longer than a summary trial, and at the finish the question of punishment does not rest with the justices.

The matter of bail is important. As a person should be presumed to be innocent until he is found guilty, and as a number of persons who are committed for trial are in fact subsequently found not guilty, it is manifestly wrong to keep any one in prison while awaiting trial if this course can be avoided. Bail is in effect an undertaking by the prisoner himself, usually backed by the guarantee of some other person or persons, that he will in due course appear before the Court. The question for magistrates to consider with regard to granting bail is, primarily, the probability of the accused's appearance at the trial, and in dealing with this they should take into consideration

the nature of the offence and its punishment, the strength of the evidence, and the character or behaviour of the accused.

What justices usually do in practice is to ask the police for their views. If the police raise any objection bail is almost invariably refused without further evidence of any kind being called. I have known bail refused by the justices when the only ground of objection put forward by the police was that they had not yet recovered the stolen property and the accused had given them no assistance in doing so. He had not pleaded guilty. This happened in May 1932. The man urged that his wife was alone in the house and daily expecting to be confined, but the justices maintained their refusal. During the week's remand the man confessed and bail was granted. I have often seen bail refused to men who were not legally represented on the mere objection of the police, with no ground alleged.

Unless the accused is legally represented he usually does not understand that he has any right to bail. The reluctance of justices to grant bail in proper cases has often been the subject of judicial comment. So important has this question of bail been considered in English law that it is dealt with by the Statute of Westminster in the reign of Edward I, by the Habeas Corpus Act and the Bill of Rights, as well as by other Statutes. It is true that an appeal lies to a High Court Judge from the refusal of the justices to grant bail, and that the magistrates, when they refuse bail in a case of misdemeanour, are bound to inform the accused of this right. As, however, an undefended man is not likely to have any notion as to how to appeal, this provision is not of much practical value, though at some prisons the authorities are very helpful. In my experience prison warders usually dislike the police and their ways and do all in their power to keep a prisoner informed as to his rights,

and to help him in his defence. I am speaking of the short-term prisons.

When considering bail, imagine the position of an innocent prisoner who may have had to spend two months in gaol awaiting trial. The expense and difficulty of his defence is obviously increased. His solicitor has either to come to the prison, or send a clerk, to see him by appointment. He is unable to seek for evidence himself. The anxiety of his position is increased by unfamiliar surroundings, and the absence of relatives and friends. If he has a wife and children he worries about them. Although a prisoner awaiting trial is better off in some respects than one who has been convicted, he definitely suffers imprisonment. And if, after all, he is acquitted, he has neither remedy nor compensation for all he has gone through. It must be remembered that, even if there is no interruption of employment, the fact that a man has been in prison, although subsequently acquitted, tells against him.

The tendency on the part of magistrates to " support the police " has previously been referred to. It goes beyond a tendency. With the majority of benches it may be called a principle. It has mischievous results. In the first place, it is always a bad thing for power to be divorced from responsibility. In far too many courts the police in effect try the cases in private, and if they decide to prosecute a conviction automatically follows. All that the Court does is to pass sentence, and even in this they are largely guided by what the police say. Their attitude is very much that of a head master before whom a boy is brought by a house master or prefect. The very name " police court " is an unfortunate one, for it creates a wrong impression in the minds of the justices as well as the public. Some magistrates apparently go so far as to think that the police actually make the law. The Chairman of one of the most important " police courts " in the country

a few months ago, in dealing with an alleged breach of a regulation made by the Ministry of Transport under the Road Traffic Act, is reported to have said that the defendant might have done what he himself thought sufficient but it did not satisfy the Police Regulations. It would almost be better to allow the police to deal with minor offences themselves without the intervention of the magistrates than to continue the present practice.

No one with experience of the Courts of Summary Jurisdiction can fail to know what goes on. The right procedure is, of course, for the police to bring to the court such cases as they think proper, and for them to accept whatever decision is arrived at by the justices. There may be such districts. In over twenty-five years' experience of the courts I have not come across them, though I have met individual police officials who took the proper attitude. Not once, but many times, I have heard police officers of rank petulantly declare, after a charge has been dismissed, that they will not bring such cases before the Court again after such treatment. I have heard an advocate of long experience, when discussing motoring prosecutions with the representative of an insurance company, seriously argue that it was necessary for the magistrates to convict in practically every case, otherwise the police would refuse to prosecute. Newly appointed magistrates have in several instances asked me whether they were bound to accept the evidence of the police, and have added that they have been told, sometimes by the Clerk, and sometimes by a senior magistrate, that they were so bound. These have been men of independent judgment. It is fair to assume that the majority of justices accept the ordinary practice without question. It very commonly happens that magistrates announce, in a case where the evidence has been conflicting and unshaken, that they must accept the evidence of the police, and

therefore they convict. Again the presumption of innocence fails.

The unduly close connection which often exists between the police and the Magistrates' Clerk's office has already been referred to. In addition to the impropriety of the Clerk having given an opinion on a point upon which he may subsequently be asked to advise, in many courts the office staff, and sometimes the Clerk himself, are told a good deal about what the police suspect, as well as what they can prove. It is probable—I have myself been told by magistrates of instances—that some at least of these suspicions are imparted by the Clerk to his justices when they retire. I do not say that this happens often. It certainly happens sometimes. One of the worst features of this kind of thing is that there is no possibility of correcting any mistake that may be made. For instance, in the case previously referred to, where the Chairman of the bench said in open court that a bad report had been given them about the accused, I afterwards ascertained that the Chairman had, quite improperly, seen a report, but it actually referred to another man, and not the one before the Court.

The absolute confidence in police evidence displayed by magistrates is by no means shared by High Court and County Court Judges. In view of the temptations to which the police are subjected it is dangerous to put them in a position in which their uncorroborated evidence will make a conviction certain. We have an object lesson in the United States of what results from unpopular laws enforced by a corrupt police before political benches. To suppose that evils which exist elsewhere never happen in this country is a fallacy to which Englishmen are peculiarly prone.

The magistrates and their clerks should be far more watchful with regard to the police. For instance, there are two little tricks which happen in slack courts

when the justices are considering their decision in Court and appear to be in doubt. One is to sort out cards giving previous convictions or openly to look into a record book. The other, which is used if the first fails, is to inquire from the Clerk in an audible whisper whether the bench have decided to convict. This gives the necessary hint that there are previous convictions, a point which may well turn the scale against the accused. The worst of these tricks is that it is impossible for a defending advocate to say anything at the time. If he does, he is himself calling the attention of the bench to what they may possibly have missed. Further than this, the truth of what he says will certainly be denied, and he will have done his client no good at all by " making reflections " on the police. Police " asides " are of course common enough in the courts, but then both prosecuting and defending advocates are just as bad. They have, however, more excuse.

There is a great difference, as many motorists know, between the way police evidence is given in a court known to be favourable and one supposed to be unfavourable to them. One of the latter kind with which I am acquainted is especially obnoxious to the police. It is rumoured that a prominent member of the bench in question was prosecuted and convicted on police evidence in another part of the country. Whether there is any truth or not in this I do not know, but it is certainly a pleasure to appear for the defence in this particular court. In many courts, however, police evidence is supposed definitely to establish whatever facts it is called to prove. Their statements cannot be contradicted, but must, if possible, be explained away by the defence.

It not infrequently happens that a constable, giving evidence in a licensing or betting prosecution as to having kept some house under observation, is asked in cross-examination to disclose the place where he

was concealed. It would seem obvious that this information is of vital importance for the purpose of checking the possibility of his having seen what he has described, but some benches usually refuse to order the officer to answer. The point came before the High Court many years ago in the case of Webb *v.* Catchlove (50 J.P. 795), in which two judges held that the information sought was directly material, and quashed with costs a conviction when it had been withheld. Nevertheless, I have personally known cases where different benches have supported constables in their refusal to answer. In one such case Webb *v.* Catchlove was quoted and the information was, after a lengthy argument, given in writing, the Chairman saying that the defendant " must take the consequences " if the house was mentioned in open court. The excuse given by the magistrates in these and similar cases is usually that it is against the public interest that any one who assists the police should run the risk of victimisation. It never seems to occur to the justices as strange that public sympathy should be supposed always to be with the defence. Witnesses, as every police court advocate knows, are often very reluctant to give evidence " against the police ". Would they stand the slightest chance of having their names and addresses withheld on request by the defending advocate ? Mr. Rudyrad Kipling is a close observer and will hardly be suspected of any prejudices against authority, yet in one of his stories a policeman significantly remarks : " It never does a man any good in the long run to have the police against him."

I have known the prosecution ask for the withholding of the names and addresses of men employed by the police as spies. The police official concerned was indignant when the magistrates, on the strongly expressed advice of their clerk, ordered the information to be given in answer to cross-examination.

In many courts, owing to the large number of magistrates, they sit in rotation. Sometimes in country districts a magistrate will sit once only in three weeks. In most courts it is an unheard-of thing for a magistrate to sit out of his turn, except in a great emergency. This enables prosecutors and applicants to pick their court if they wish to do so, and causes much dissatisfaction, whether well or ill-grounded. It is hard to see how this can be remedied in the case of the larger towns, for it is not unreasonable that some attention should be paid to the convenience of witnesses and advocates, although equal consideration should of course be given to the defence. But justices in country districts should be prepared, as a condition of their appointment, to sit once a week. It is not only a question of selecting a bench likely to be favourable, or, for instance, avoiding a " Labour " magistrate known to have strong views about employer and workman cases. There is sometimes not merely a tendency to variation, but a definite difference between the punishments awarded on different days. I knew one court where for many years the fine on a particular day for a certain minor offence was exactly half what it was on all other days in the week.

A good deal of the adverse criticism commonly made in connection with magistrates and the difference in the penalties they impose for what appear to be similar offences is probably undeserved. Standardisation of punishment is almost impossible, even were it desirable. But newspaper reports are usually of necessity inadequate to supply a fair basis for criticism. Several things are, however, unsatisfactory with regard to punishment. Broadly speaking, magistrates tend to treat offences against property with far greater severity than those against the person. There are few things meaner than the ordinary assault case, although at times the provocation fully justifies an assault. It is very seldom that a man assaults

another unless he knows he is a certain winner. Anything like a fight is rare. Yet a penalty of 20s. or less is the usual thing in assault cases, while if the defendant hastens to take out a cross summons there is more than a chance that both parties will be bound over whatever the evidence. Assaults on women are often treated with absurd leniency. I do not refer to wife assault, where a fine or imprisonment often punishes the woman more than the man.

The only exception to the lenient treatment of offences against the person occurs in cases of a sexual nature. In these the justices tend not only to be unduly severe in dealing with men who are fitter for the hospital than the dock, but also to convict on insufficient evidence. One constantly hears magistrates say: "The bench feel that they must make an example in these cases in order to protect women and children", and it is generally useless to point out that such protection cannot be afforded by the conviction of an innocent man. As a rule it may be taken that if a man has only once been convicted of an offence such as indecent exposure, there has been a miscarriage of justice. I have known of a man with over fifty convictions for this offence. Even if a man has means, medical evidence as to "uncontrollable impulse" is ignored; as the law stands, justifiably.

In the country districts a man charged with poaching has, as a rule, little chance of acquittal. It is true that he is usually guilty, if not of the particular offence charged, at least of being a poacher. But there are a certain number of cases where he has a genuine defence. For instance, it not infrequently happens that a man is given permission by a tenant farmer to shoot rabbits. He is caught on the land, and pleads that he had permission. The farmer, however, is often too much afraid of his landlord to admit this, and the man is convicted. It is difficult to see how

the magistrates can be blamed for this position, but any solicitor practising in a shooting district knows how the matter stands. In one district a large landowner used to sit with his agent. I remember a young solicitor of my acquaintance going to this court to defend a poacher. I met him the next day and asked if he had got his man off. "Got him off," was the reply, "I hadn't been in the court ten minutes when I began to doubt whether I should get off myself with less than a month." The attitude of a shooting bench is too often similar to that attributed to the agricultural justices in the old story of the man who was charged with stealing apples. A neighbouring farmer met one of the justices the day after the hearing of the case and asked the result. "We give him a month," was the reply, "and if we'd ha' been sure he was guilty we'd ha' given him six."

This story illustrates a most unfortunate tendency on the part of many benches, which has been accentuated by the Acts dealing with the Probation of Offenders. Of recent years the practice of putting first offenders on probation has considerably increased, and in some courts has become a matter of course. Unfortunately, it too often happens that where the magistrates have some doubt as to whether or not the offence is proved they think no harm can be done by putting the accused on probation. A case occurred not many months ago in which a girl was charged with stealing a coat. The only evidence against her was that on a rainy night she had taken the coat, as she said in mistake for her own, which it was not disputed had been left. There was no evidence as to any considerable difference in the value of the coats. The girl, who was not legally represented, was put on probation. A member of the Court told me that they had felt considerable doubt about the case, and thought there could be no harm in putting the accused on probation. To do him justice, he was

very much upset when I told that the girl, who had been six months unemployed, had as a consequence of their action lost a job which she had just obtained. The practice on the part of magistrates of inflicting a very light penalty so that it shall not be worth a defendant's while to appeal is so well known that any experienced advocate, when defending anyone of means, will always try to take some technical point of law, however ill-founded, if he has a doubtful case. Many a bookmaker is heavily in pocket in consequence of this.

A class of case with which the magistrates are peculiarly ill-fitted to deal is that connected with matrimonial relations. The law on the subject of separation and maintenance orders, so far as the magistrates are concerned, is obsolete, even more so than our divorce laws. A wife can apply to the justices for a separation order on the ground of persistent cruelty to herself or her children, of desertion, of failure to provide reasonable maintenance, of habitual drunkenness as defined by law, of intercourse by the husband while knowingly suffering from venereal disease, and of his compelling her to submit to prostitution.

A husband can apply when his wife is a " habitual drunkard ", or is guilty of persistent cruelty to his children.

It is very hard to prove that a person is a habitual drunkard, within the meaning of the definition contained in Sec. 3 of the Habitual Drunkards' Act 1879. The other grounds are, however, in practice easily proved when the applicant is the wife. Many benches take the attitude that if the wife has reached the stage of genuinely desiring to leave her husband the parties are better apart. There is much to be said for this view in the abstract, but it is not in accordance with the law, and in practice it creates much more hardship than it relieves. Wives know that they have only to

apply to the Court, with a neighbour or relative to corroborate their evidence, to get a separation or maintenance order. They can easily make life intolerable for their husbands under such circumstances, so that the applications are scarcely resisted, and orders are constantly made far beyond the means of the men to pay.

The justices have power, in addition to an order equivalent to a judicial separation, to make an order against the husband for payment to the wife of a sum not exceeding £2 a week, and not more than 10s. a week for each child under sixteen years of age. The husband can obtain no such order, whatever the wife's separate means may be. In making an order the magistrates are bound by law to have regard to the means both of husband and wife, and the High Court have laid down that they ought to follow the Divorce Court practice of allowing the wife one-third of the joint income, although there is no hard-and-fast rule. The justices habitually make orders entirely without regard to the husband's means, with the result that an increasing number of men are committed to prison for failing to perform the impossible. There is, for practical purposes, no appeal. Should a man, smarting under his grievance, complain to the Home Secretary, his letter is forwarded to the magistrates. I have myself been present in court when a man who had so complained was before the justices, and have heard what they said about him. At the moment of writing he is doing three months for non-payment of arrears. I do not for a moment suggest that he was imprisoned for writing to the Home Secretary. But the impression created was unfortunate.

Separation orders are commonly made after an even more hasty hearing than is given to other cases. In particular, acts of cruelty are taken as proved upon evidence that would seldom be accepted in an ordinary case of assault.

Adultery is an issue that often has to be tried by the magistrates. A more unsuitable court to deal with such a question can hardly be imagined. Perjury is frequent enough in all courts, but in sexual matters lying is almost common form. From age, lack of experience, and social position magistrates are usually quite incapable of appreciating the evidence before them. They may be excused for so frequently coming to a wrong decision on this particular point, for the High Court seems at the present time to have no standard as to what is satisfactory evidence of adultery. If the present tendency continues it will be necessary to call two credible eye-witnesses of the act in order to satisfy the Divorce Court. But the absurdity of the present law is that, while permitting the magistrates to try all the difficult questions, including adultery, which may arise in the hearing of a petition for divorce, and allowing them to separate the parties, it refuses them power to grant divorce. The result of the separation orders which are so freely granted is, of course, sexual immorality. In many cases, both parties disqualify themselves for obtaining a divorce within a few months of the separation order being made.

It is not suggested that the magistrates should be given power to grant divorce. All matrimonial questions should be taken out of their jurisdiction and transferred to the County Courts, which should be granted divorce jurisdiction. No single reform would make such a reduction in the sum of human misery.

Affiliation is another matter in which the magistrates are very frequently wrong. This, again, is much too important a class of case to be left in their jurisdiction. An order up to 20s. a week until the child is sixteen can be made, and difficult questions of law and fact constantly arise. Perjury is rife in such cases, and has considerably increased in affiliation and matrimonial applications since they have ceased

to be reported in the Press. Magistrates tend to take the view that somebody must pay for the child, and if they do not make an order against the man before them the mother obviously cannot accuse anyone else. During the hearing of an affiliation summons the other day I was told by the local policeman that there were five other possible fathers of the child in the public seats in the court. The power to take out a summons before the birth of the child by making application on oath to a magistrate is sometimes abused. It gives an opportunity for the applicant to give her version of the case, uncontradicted and in private, to a member of the bench before whom the case will subsequently be heard. I well remember taking a girl before a certain magistrate to apply for a summons. He became interested, and asked her a number of questions. Presently he could contain himself no longer and broke out, "You don't say so! The scoundrel! Wait till we get this ruffian before us!" Then turning to a clerk he said, "Mr. ——, see that this case is put down for a Friday," naming the day on which he sat. An order was subsequently made. I had no ulterior motive in this particular case, but I have since looked with suspicion on such applications, often made without any genuine excuse.

Women magistrates are especially bad in dealing with matrimonial and affiliation cases. As a rule they have either a violent prejudice against their own sex or else they think the sole purpose of their being put on the bench is that they may make separation and affiliation orders for the benefit of women or girls. Women magistrates, too, are even more prone than men to convict on insufficient evidence in charges of offences against children, a class of case where the evidence needs exceedingly careful sifting. Women magistrates are like women motor drivers, either very good or very bad, but usually the latter.

It is difficult to discuss the question of Courts of Domestic Relations because so much depends upon the constitution of the Courts. I do not think it would be possible to find the right people to staff them. The value of the intervention of the Court Missioner in matrimonial cases depends entirely upon the personality of the man or woman concerned. Its usefulness, however, is largely destroyed when the justices, after adjourning a case for the missioner to deal with, ask for his report on the matter. Once a missioner has reported that the man or woman, as the case may be, is to blame, there is an end of his usefulness in matrimonial matters in that court. No husband or wife will ever speak freely again knowing that what is said may go against them subsequently. The fact that it is quite improper for the Court to receive such reports, which are not given on oath, and which are based partly on hearsay and partly on what should be privileged communications, does not deter magistrates from asking for and receiving them. There is a strong feeling among many Court Missioners that they should not be asked anything about their investigation of matrimonial cases beyond the bare result, successful or otherwise.

An exception to the rule that magistrates usually decide in favour of the prosecution is found in cases where schoolmasters are prosecuted for assault by excessive chastisement of pupils. Only those who know the working classes well realise the resentment this causes, and the bad effect it has upon educational progress. It has always surprised me that it never seems to occur to the magistrates that they would not have to deal with so many cases of assaults upon school teachers by angry parents if there were not real cause for discontent. I have been present in court during the hearing of many such cases and almost always the parent appeared to be smarting under an intolerable sense of wrong. Both in cases of prosecu-

tion of parents for assault and the defence of school teachers the National Union of Teachers sees that its members are represented by solicitor or counsel. It is usually only in cases taken up by the N.S.P.C.C. that an advocate is employed on the other side. Almost invariably in such cases one of the magistrates remarks that it is only at the great public schools that no one objects to corporal punishment. I am not concerned here with the rights and wrongs of such punishment, but it should be remembered that parents who send their children to the public schools can remove and send them elsewhere at will. No such choice is open to the working classes. Some elementary schools are perfect hells for a sensitive or timid child.

It has always seemed to me worth noting that writers who speak of ill-treatment or abuses at schools almost invariably suggest that such matters are things of the past. The latest instances are to be found in Mr. Oliver Baldwin's *The Questing Beast*, in relation to Eton, and Professor Sullivan's book, *But for the Grace of God*, in connection with elementary schools.

Motoring cases are about as often wrongly as rightly decided. The middle-class motorist is almost always defended by solicitor or counsel, who is often a specialist in this class of case. Unless, however, the evidence for the defence is overwhelming, or some technical point arises which cannot be got over, a conviction is more than probable. I have known thirteen convictions in one day out of fourteen prosecutions. The other was dismissed on payment of £6 costs. There can be no doubt that magistrates often convict, or dismiss on payment of costs, because otherwise the police will have the costs to pay. I have several times been told by magistrates that they have done so, and the fact is notorious. At one time the practice of paying a prosecuting solicitor by results existed in some courts, but the Home Office put a stop to it. Obviously improper though the former procedure

was, it is doubtful whether the Home Office action has improved matters. It probably prevents prosecutions in cases where the legal evidence is doubtful but which ought to be brought before the Court. It has also tended to induce the police to press unduly for a conviction lest they should get into bad odour with the local authority who pay costs when they lose. It is almost always the same solicitor who prosecutes for the police, and far too often he is a clerk to the justices in an adjoining district. The disadvantages of such a course should be obvious. Police prosecutions, in motoring cases, are a very profitable branch of advocacy, sometimes representing as much as £30 or £40 for a day's work, involving no clerical expenses or collection. The work of prosecuting for the police should be distributed among local solicitors so that no one of them should be specially identified with the force. Under no circumstances should it go to a Magistrates' Clerk. An alternative would be to instruct members of the junior bar. By arrangement this might be done without the intervention of a solicitor, and might in many ways be preferable. The costs of prosecutions, or of the defence if they were awarded costs, should be paid from a central fund, so that the justices might be freed from anxiety as to where the costs were coming from.

In motoring cases the evidence is of necessity very difficult to weigh and estimate fairly. Even should there be independent eye-witnesses, for instance of a collision, it is impossible for anyone simultaneously to watch two moving objects. Yet the issue in motoring cases generally depends on the relative positions of the vehicles at a particular time or times. As a result circumstantial evidence, such as marks on the road, the damage to the cars, road surface, brake power and similar matters are of vital importance. The magistrates, however, have very seldom the technical knowledge necessary to interpret such

evidence. With the growing importance of motoring cases and the severe penalties which may be inflicted under the Road Traffic Act it is desirable that men with the necessary technical, mechanical and engineering knowledge should be appointed to assist the justices. There would be little difficulty in finding suitable men who would be willing to act without payment, and they could be appointed as magistrates on the understanding that they should sit for motoring cases only. From the point of view of abstract justice to motorists separate courts should be held, presided over by a Stipendiary Magistrate with special qualifications, but from the public point of view it is undesirable that any class of offender should have preferential treatment. Motorists are not the most hardly dealt with of those who appear in the Courts of Summary Jurisdiction, and they are at least legally represented, and usually have the means to appeal, little as that remedy is worth under present conditions.

Police evidence in motor cases is often of an amazing nature, although it is almost always accepted by the average bench. The following instances are within my own experience, and might be multiplied to any extent.

I was defending a driver charged with exceeding the speed limit. Incidentally, there would have been no offence if the events had taken place a month or two later, but a number of drivers were being prosecuted as a farewell effort. One policeman, uncorroborated, gave the evidence. The following was part of the cross-examination :

Q. How far away was the car when you first saw it ?

A. About 100 yards.

Q. Head on ?

A. Yes.

Q. How did you estimate the speed ?

A. Well, it did the 100 yards in ten seconds, and that's equal to 40 miles an hour.

Q. Should you be surprised to hear it's about twenty ?

A. I should.

Result—Convicted and fined.

I was defending in the next case also, and the same policeman gave evidence as before, putting the speed at 35 miles per hour.

In cross-examination he gave replies as in the previous case, with regard to distance and the car being head-on. I asked him how he estimated the speed. He smiled and answered, "I worked it out again in the last case and you were quite right."

I said I knew I was, and asked what about this one. The following were the questions and answers :

A. It was going about twice as fast as a 'bus.

Q. Was there a 'bus on the road at the time ?

A. No.

Q. Did you see a 'bus that afternoon ?

A. No.

Q. That day ?

A. No.

Q. When did you see a 'bus ?

A. The same week.

Result—Convicted and fined as before.

I can vouch for these as being the exact questions and answers. No interest is taken in this class of case, there are no reports in the Press, and convictions are almost automatic.

In another case a few weeks ago I defended a man who was charged with driving without due care and attention. The evidence for the prosecution was given by two of the mobile police, and the only allegation against the defendant was that he had rounded a corner from a main into a side street on his

near side at 15 miles per hour, which they contended was excessive. In cross-examination the police admitted that their own vehicle rounded the corner in the opposite direction, i.e. into the main street crossing the line of traffic, at 20 miles per hour. In this instance, however, there were two owner-drivers on the bench, and the case was dismissed.

The worst feature of the present system of dealing with motoring offences is the frequent injustice, and occasional loss of livelihood, suffered by undefended drivers of the working classes. The drivers of public service vehicles are generally legally represented, either on the instructions of an insurance company or the Transport Workers' Union. They undergo the additional risk, however, that their convictions are reported to the Traffic Commissioners, which is likely to endanger their jobs.

Our system of criminal justice is said to be almost perfect. Theoretically there is not very much wrong, except that many of our laws are obsolete. But in practice let us consider what chance has an innocent man or woman, without money, who is charged with theft, embezzlement, false pretences, indecency, or some other offence, not perhaps involving very severe punishment, but of such a nature that a conviction is a life-long stain. Such a person, knowing nothing of the procedure, and, as we have seen, confused by what is said and done, is brought before a court consisting of men and women very unlikely to have judicial minds. The Court is impressed with the idea that its duty is to punish and stamp out crime. It is usually in a hurry. It is obvious that the circumstances must have been such as to arouse strong suspicion, or the defendant would not be before the court. If the accused has previously been convicted in that court the magistrates, or some one of them, are sure to remember it. On 4th April, 1932, a man was brought before a provincial court charged with a betting

offence. "Hullo, you here again?" was the Chairman's greeting. He had been convicted of a similar offence a few months before.

On 20th May, 1932, in another court, a man had just been convicted. The Chief Constable rose, with a hazy notion of keeping matters in order, and said, ". . . is here on another charge on the sheet. I don't know whether you'll take that first before you hear his convictions." With that regard for form that characterises English Justice, the Bench did wait. The Chairman, however, remarked, "I thought we'd seen him here before." The man was, of course, undefended. As I was representing a client whose case had not yet been heard, I felt it was impossible to intervene.

The Poor Prisoners' Defence Act is, in most courts, practically a dead letter. Where there is no advocate for the defence to take objection, the rules of evidence are constantly ignored, to save time. It is impossible to say how many undefended innocent persons are convicted, but there must be a large number. With regard to those who are defended, from personal experience I should say that there are nearly as many innocent defendants who are convicted as guilty ones who get off. There are many innocent persons who would have been convicted if they had not been defended. And it must be remembered that, especially in the case of those who have been previously convicted, by no means all who plead guilty are in fact guilty of the offence with which they are charged.

Where any question of politics or social prejudice enters into a case the magistrates become wholly unreliable. Those who saw much of the agitation for women's suffrage in the years before the war will remember the attitude of the magistrates. Any sort of evidence was enough to convict a "suffragette". But it was almost impossible to get any bench to convict for assault on a suffragette, however gross. In fact,

on more than one occasion leave to issue a summons for assault was refused, the magistrate in effect saying it was only what they must expect from a justly infuriated people.

A similar attitude of violent prejudice existed during and after the "General Strike" and the Coal Strike. Only those who have defended in cases during that period can realise how far removed the atmosphere of the police courts at that time was from that of a court of justice.

A matter which should be removed from the jurisdiction of the justices is the making of ejectment orders, at any rate where any question of decontrol arises. The Small Tenements Recovery Act of 1838, under which application can be made to the magistrates for ejectment orders in the case of dwelling houses let at less than £20 a year, was only intended to prevent breaches of the peace. A landlord, apart from the Rents Acts, has the right to eject by force a tenant whose tenancy has been determined. To enable the landlord to avoid disturbances which might be occasioned by the exercise of this right the magistrates were given power to make ejectment orders to be carried out by the police. Their duties in such cases are ministerial, and they are bound to make the order if the necessary formalities are complied with.

Procedure under the Small Tenements Recovery Act is, however, now subject to the provisions of the Rents Acts where they apply, and it falls to the magistrates to decide the difficult questions of law and fact which arise under the latter statutes. So difficult are the points of law under the Rents Acts that there have been many conflicting decisions in the High Court, and the Court of Appeal and the House of Lords have been puzzled by cases thereunder.

Magistrates, partly because they were formerly in the habit of making ejectment orders as a matter of course, partly because they tend to decide for the

applicant, and partly because they include a large proportion of property owners, are preferred to the County Court by landlords applying for ejectment orders. It is very rarely indeed that an application is made to the County Court in a case where it is possible to go to the justices for an order. This is a severe hardship on the tenant, for it is seldom that he gets the benefit of the provisions of the Rents Acts unless he knows enough to raise the points for himself. In the County Courts the Judge knows the law, or at any rate the pitfalls, and goes carefully into each case. In the police court the applications are often rushed through anyhow. I have myself heard five ejectment orders made in six minutes. This happened a month or two ago, and no inquiry was made as to whether the houses were subject to the Rents Acts or not. Hearsay evidence is constantly admitted on the hearing of these applications, and I have often known the court accept the mere statement of the landlord's agent that a house was decontrolled, without inquiry as to the facts upon which the statement should have been based, and although they knew he had only been employed as agent for a few months past and the tenancy was an old one. This question of control is of vital importance, for if a house is not subject to the Rents Acts the magistrates have no option, whatever the hardship may be, but to make an ejectment order to be carried out in not more than thirty days. Cases of great hardship often arise, and the grievance is very far from a technical one.

The Rents Acts, in the present state of the housing problem, seem likely to remain in force for several years at least. An amending act is in any event necessary and the opportunity should be taken to remove from the Magistrates' Courts cases where there is any question as to the Rents Acts. This could be dealt with by providing that the jurisdiction of the justices should be ousted where there was any *bona fide*

claim that the Acts applied, in a similar manner to the ouster of their jurisdiction in cases of assault where there is a *bona fide* question of the title to land.

Rate summonses are usually treated by magistrates as a matter of routine, and committal orders are made *en masse* without inquiry except as to whether the technical requirements have been fulfilled, a point on which the justices are easily satisfied. It often happens that a tender-hearted Chairman will tell the unfortunate defaulters how sorry the bench is for them, but that there is no alternative but for them to make a committal order. I have myself heard this said a number of times, and the newspapers constantly report such remarks Yet the Rating and Valuation Act 1925 Sec. 2 (3) provides that a commitment shall not be issued where the person rated proves to the satisfaction of the Court that his failure to pay is due to circumstances beyond his control. I have often myself called the attention of magistrates to this power, but many benches are apparently quite unaware of it. In 1929, 1875 men and 127 women actually went to prison for non-payment of rates. I do not know the figures of those who were committed but managed somehow to get the money to escape gaol.

The attitude taken by a large number of magistrates towards licensing and gambling offences is not the most serious of the deficiencies of the Courts of Summary Jurisdiction, but it occasions a great deal of comment among the working classes. It is a common thing to hear a magistrate, who is notoriously in the habit of betting on the principal races and of playing cards for money, sternly rebuking some unfortunate lad who has been caught playing pitch and toss or having a game of cards under the shelter of a pit mound. Similarly, one of the strictest justices in the administration of the licensing laws that I have known was in the habit, just before the bar at his club closed, of ordering two whiskies and sodas, which he would

place beside him for future consumption. So far does the vindictiveness of some magistrates against gambling in the working classes go, that, after the conviction of a war-widow for "aiding and abetting" in a betting case, because she had taken a slip and sixpence to a bookmaker's house for her grown-up son, I have heard the chairman of the bench give a police officer instructions in open court to communicate the conviction to the local War Pensions Committee with a view to getting the woman's pension stopped. I am glad to say the result was a severe snub to the justices from the Committee.

The question of licensing is a difficult one to deal with. That magistrates are approached and attempts made to influence them in various ways in connection with licensing matters, a good many familiar with the position know. But practically no one will admit the fact, for the approach is made from both sides, and there is little to choose between the temperance fanatics and the brewers. I have myself been in court on the hearing of a licensing application when there was a bench of thirteen. A representative of the brewery company concerned asked me how the bench would vote. I was able to tell him, with complete certainty, that there were six on each side and the decision would rest with the Chairman. In some courts there is scarcely a pretence of conducting licensing business in open court, and advocates, and even parties in person, sometimes join the magistrates in retirement. The difficulty of dealing adequately with the licensing position, as compared with other matters, is that the damaging facts are known to comparatively few, and those few are, for obvious reasons, unlikely to disclose or admit them. The colourless report of the Licensing Commission shows the difficulty of getting information. Apart from the risk of libel actions, to quote a few instances is useless unless they are at once recognised as typical. A

large number of people can, and some will, corroborate what I have said about other evils. This is not the case with regard to licensing.

The dock is a feature of our police courts which should be abolished. In the United States it does not, I believe, exist. Its disadvantages are numerous. By isolating the accused and putting him in a prominent position to be stared at adds largely to the nervousness and misery from which he suffers, and which prevent many an innocent person from telling a clear story. In the United States the accused is usually allowed to sit by his advocate. This is especially necessary in the police court, where it is seldom that a solicitor has more than a general outline of the defence. It is exceedingly awkward to be compelled constantly to take instructions from one's client in a hoarse whisper, far too often audible to the prosecution. An unscrupulous advocate for the defence can sometimes make good use of these asides, but they are very undesirable in the interests of justice. It would give an innocent person a far better chance if he were allowed to sit by his advocate, or with a friend if unrepresented.

A good example of the awkwardness of the present position occurred a few days after this was written. I was defending two men who were charged with house-breaking. A police officer gave evidence that he had ascertained that entrance had been effected by forcing back the catch of the window. One of the men leaned forward from the dock and exclaimed in a very audible whisper, " The bloody liar ! We got in by the door."

I may perhaps add that the point was of real importance as the door had been left open, which, so far as the breaking was concerned, was a good defence.

In addition, there is the question of identification to be considered. It often happens that a witness is asked to identify the accused, and it is obviously

unfair that he should be put in a position where it is almost impossible that the witness can name anyone else. I have, however, once seen an amusing mistake made. It was a case of indecent assault, and I fear it had been suggested to the witness that the person to be identified would be found placed by himself in an elevated position. When the complainant had been sworn she was asked to look round the court and say whether she saw the guilty man. At first she failed, and was told to look again. This time, after a brief inspection, she pointed an accusing finger at the Magistrates' Clerk, who sat at a high desk below the justices, and exclaimed, " That's 'im." After general laughter, she indicated the man in the dock as her next choice.

There is nothing but a bad old custom in favour of the dock. It should be abolished, as should also be the custom of addressing prisoners, both men and women, by their surname, without prefix. If a similar manner of address were adopted in the case of all witnesses and advocates there would be something to be said for it. As it is, it merely emphasises the fact that accusation is nine points of conviction.

It is hard to make people understand the injustice that is done in the police courts. I have known magistrates, among them some of the worst, who were entirely complacent as to the excellence of their administration of the law. They would be astonished to hear that anyone should even suggest that all was not for the best in the best of all possible courts in which they sat. High Court Judges, even Lords of Appeal, sometimes sit as Justices of the Peace. It is improbable that irregularities occur when they are sitting, though strange things happen occasionally, even at Assizes, as the record of the Court of Criminal Appeal shows. But no one denies that there are good Courts of Summary Jurisdiction. What is asserted is that there are far too many bad ones, and that many

innocent persons are convicted, and many other irregularities are committed by the magistrates. It is significant that any solicitor, however incompetent in other respects, can soon get together a practice as an advocate if he has the pluck to stand up to the bench in defence of his clients.

I am writing this as a witness of fact, not as an advocate. I speak of what I have seen. I was articled in a highly respectable conveyancing office. I must not identify it, but it was as highly respectable as an office can be. I came into the police court by way of licensing business and drifted into advocacy. What I saw shocked me more than if I had always been accustomed to it. I could not at first believe there was not some mistake somewhere. Such things could not happen in England. Mr Oliver Baldwin, in his book *The Questing Beast*, on page 42 describes his youthful astonishment at finding that a man awaiting trial by Court Martial was deliberately refused access to the *Manual of Military Law* and *King's Regulations*, to which he had a right. I know exactly how Mr. Baldwin felt. Since I have quoted him it is well to add that I am a Conservative in politics. Those who wish to retain our institutions must reform them. It is the revolutionary party that profits by abuses.

Before coming to a decision as to whether the evils of which I have written are widespread or not, let the reader consider the probabilities. It cannot be denied that magistrates are drawn largely from political partisans, that they have no judicial training, and that they are usually well advanced in years when appointed. The great majority of defendants belong to the poorer classes, are ignorant of law and procedure, inarticulate and undefended. There is admittedly insufficient time to get through the vastly increased work thrown on the police courts. Is it likely that justice will be done? A large proportion of the clerks who advise the magistrates are them-

selves in private practice, often as prosecutors for the police. And against the decisions of a Court so constituted appeal is, for the vast majority, practically impossible.

What Should Be Done

The great obstacle to reform of any kind lies in the higher ranks of the Civil Service. Permanent officials, being human, dislike any change in a system they have grown to understand. Changes mean trouble and work for them. Parliamentary government being what it is, civil servants have a good deal of practice in finding excuses and evasive answers for harassed Ministers to give when questioned about shortcomings of their departments. They soon learn to give similar answers to Ministers who show any tendency towards reform. Labour Ministers appear to have been exceptionally easy to satisfy. Certainly Mr. Clynes, when Home Secretary, must have given very little trouble. His complacency was marvellous. He might have been one of the assembled barons who did not wish to change the laws of England. Another obstacle to the reform of the magisterial system has previously been referred to. Whether the party machines can ever be persuaded to give up the opportunity of cheaply rewarding political services is doubtful. It may be that they will get tired of the pestering to which they are subjected by those desirous of elevation to the bench. But whatever the obstacles, and however unlikely reform may be, it seems worth while to indicate the direction it should take, if it is to be effective.

It is not desirable that stipendiaries should be substituted for lay magistrates. I know that in this opinion I differ from many critics of the present system. I do so with regret, but without hesitation. It is of the first importance to retain the lay element in the administration of the law. That representatives

of the ordinary citizen should not only know what is being done, but take part in doing it, is vitally necessary. Without this, every kind of corruption and abuse becomes rife, however perfect the machinery may seem on paper. Moreover, the administration of justice will fall into the hands of a priestcraft, or of experts, if you prefer the term.

Many magistrates are doing excellent work at the present time. There are many exceedingly able men doing good service as Magistrates' Clerks. But there are others.

The system of appointment of Justice of the Peace should be changed. The Advisory Committees have made matters worse instead of better, in most places. Probably the best plan to adopt would be that of a writer in the *Week-End Review* who suggests that magistrates should be appointed from a panel, to which nominations should be made by various bodies. Chambers of Commerce and of Agriculture, local Law Societies, County Councils, and Rotary Clubs have been suggested as suitable to make nominations. To these might be added the magistrates themselves. But the mere fact of nomination should not be sufficient to put a man or woman on the panel. A few permanent officials should be appointed whose duty it would be to interview persons who had been nominated. After an interview, and such further inquiry as the officer might think fit to make, a person's name should either be accepted or rejected for the panel. The qualifications for such an official would be similar to those required for bank inspectors, who have, *inter alia*, to report on the personnel of the great banks. It would, of course, be open to any person on the panel at any time to request the removal of his or her name. Appointments of magistrates could be made by the Lord Chancellor from the panels whenever necessary. Full particulars as to age, politics and business or other experience would be available,

and there would be little opportunity for political influence to affect appointments.

Men of any business, trade or profession may make good magistrates. Suitability depends entirely on the character of the individual man. If he is honest, fair-minded, able to concentrate sufficiently to listen to the evidence, and capable of making up his mind at the finish, he will make a useful Justice of the Peace. The ideal magistrate should also possess courtesy and dignity. It is better to rely on intellectual honesty than upon kindliness to prevent a magistrate from becoming inhuman. I have often noticed that men who are very sympathetic when first upon the bench tend to become callous later, unless they have some intellectual quality to maintain their attitude. Generally speaking, my experience of women magistrates is that they have been either useless or positively bad. Their male colleagues are many of them no better, but there is a much larger proportion of good magistrates among men than among women. This is due to the fact that women magistrates are usually appointed from what I may call the "District Visitor" class. I have, however, met very good women justices, and my experience of bad ones may be exceptional.

Secondly, the status of Magistrates' Clerks should be changed. Instead of being appointed, as at present, by the magistrates, they should be Civil Servants, appointed and paid by central authority. They would, of course, all be whole-time men, and, like income tax inspectors, should not be allowed to remain too long in any one place. Probably about four years would be long enough. This would avoid undue intimacy with the police, local advocates and others. The smaller courts, which at present sit once a week or even more seldom, could with advantage be served by one whole-time clerk. The principle of whole-time service and amalgamation of districts has already

been introduced with regard to Medical Officers of Health by the Local Government Act of 1929.

The clerk should be placed in a stronger position than at present. He should rule, not advise, on questions of law and procedure, and it should be his duty to prevent irregularities, such as the improper admission of evidence or leading questions, without waiting for objection to be taken by advocates. In many courts the clerk already does this, but it is by virtue of a strong personality, not as of right. As before pointed out, power without responsibility always leads to abuses. What is suggested is that, so far as the conduct and procedure of a case is concerned, the clerk should assume the duties of a judge. He would not, however, sum up to the justices, nor would he decide upon the punishment, if any, to be inflicted.

Most of these changes in the position and powers of the clerk might be introduced gradually, as vacancies arise. They need not involve any considerable expense. And the present position is indefensible.

Matrimonial cases should be taken out of the jurisdiction of the magistrates and transferred to the County Courts, which should have power to grant divorce. It is absurd to withhold divorce jurisdiction from Courts which have power to try almost every issue involved therein and which can grant the equivalent of judicial separation. Bastardy cases should also be transferred to the County Courts. They are too important and the issues involved too difficult to be left to the Courts of Summary Jurisdiction. This would mean increased work for the County Courts, but to some extent re-arrangement of the existing business would give the judges more time. For instance, a good deal of their time is at present occupied in hearing judgment summonses. A large proportion of these in which there is no chance of a committal order being made, might be weeded out by the Registrars, leaving for the Judge only those

in which a prima facie case for committal was shown. In addition, the Registrars might hear all cases up to £10. At many County Courts the Registrar is doing nothing most of the time the Judge is sitting. If, however, more judges are needed they should be appointed. It is false economy to starve the administration of the law.

Concurrently with the amalgamation of the smaller courts the size of licensing areas should be increased. In the meantime part-time Magistrates' Clerks should be forbidden to practise in licensing matters anywhere. The public would be surprised if they realised the proportion of licensing work done by clerks to the justices.

With regard to the justices themselves, the disqualification of justices who are shareholders in breweries in the districts for which they act, or in adjoining districts, should be strictly enforced and should apply also to the Magistrates' Clerks. The grounds for disqualification should be considerably extended. At present it would appear that a justice who acts notwithstanding his disqualification runs little risk of being penalised even should the facts become public. Such a case occurred recently, and was reported in the Press. I have known of at least one other similar instance.

The effect of the meddlesome and inconsistent manner in which the magistrates have exercised their licensing jurisdiction is shown in the growth of clubs, which are, for most purposes, entirely out of their power. It is to be hoped that they will remain so. In many districts the magistrates make no secret of their hostility to the brewers and to the liquor trade in general. In others they negotiate with the brewers as to the licenses to be surrendered and granted. This latter practice has received judicial approval.

The most important reform in connection with the Courts of Summary Jurisdiction is to make appeals

easier and cheaper. Theoretically, there is always a chance of appeal in criminal cases. Practically, it is impossible for the poor, owing not only to the expense but to the technical difficulties involved. From the decisions of a certain court, dealing with about four thousand cases yearly, there were last year three appeals, two of which were successful. One was by a brewer, one by a bookmaker, and the other was a speculation of my own. I was also concerned for the bookmaker. In the previous year there was, I think, one, financed by a bookmaker client of mine. It was successful. According to *The Justice of the Peace* there are only about two or three hundred appeals yearly for the whole of England and Wales. When one considers the immense number of cases heard, the innumerable mistakes which must necessarily be made, and the effect of those unremedied mistakes, it is obvious that the present state of things is wrong.

CHAPTER III

THE POLICE

THE police forces of this country include the London Police, the Borough Police, and the County Constabulary.

The London Police consist of the Metropolitan Police Force and the City of London Police, which are separate bodies. The Metropolitan Police act everywhere within a radius of fifteen miles of Charing Cross, except in the "City of London" itself. For practical purposes this Force is commanded by a Commissioner at New Scotland Yard. It includes the Criminal Investigation Department, usually known as the C.I.D., and is about 20,000 strong. The City of London itself has its own police force, of about 1100 officers and men, under a Commissioner.

Each county has its police force, commanded by a Chief Constable, who is, however, subject in some respects to a Standing Joint Committee, composed half of representatives of the magistrates in Quarter Sessions and half of representatives of the County Council. Counties are divided into divisions, each under a superintendent. The County Police consist of about 18,000 of all ranks.

The larger cities and towns have their own police. The Watch Committee of each borough, a Committee of the Local Town Council, controls the police, who are commanded by a Chief Constable. There are about 19,000 officers and men in the Borough Police Forces.

In addition to the regular police there are Special

Constables, who are, however, only used in emergencies.

It is hard to put the case fairly with regard to the police. Many years ago I was shocked to hear a solicitor of wide experience say, not as a matter of comment but as a casual mention of a fact universally recognised, that the main fault of the police was perjury. A quarter of a century of experience has convinced me that he was right. It is a common saying among police court advocates that what one policeman says is probably true, what two policemen say may be true, but what three policemen say is never true. The foundation for this is, of course, the way police witnesses back each other up, and the fact that three witnesses would never be called unless in a case of dire necessity. A solicitor who has for many years acted for the police in prosecutions said to me a few days ago that when he was told a witness was "a good policeman" it always indicated a man who would lie through thick and thin.

Mr. Liam O'Flaherty in his story, *The Puritan*, says, "Among the poor, the police are never regarded as the upholders of the common law, but as agents of the rich to oppress those without property."

Mr. O'Flaherty was writing of Ireland, but his words are equally true in England. A crowd is almost invariably hostile to the police, in any part of this country. Yet the police are, on the whole, an excellent body of men. The vast majority of them are by nature honest, kindly and courageous to an extent above the average of the nation. Their faults are due, not to any inherent vice, but to factors outside their organisation. Among many thousands of men, although they may be above the average in character, there are certain to be a fair number who are definitely bad. The great majority of men take their colour from the more definite characters among them. The present state of the law, which makes many things unlawful which

are not generally regarded as criminal, weakens resistance to temptation. The individual policeman is not under supervision in the way that, for instance, the private soldier is. He has to a great extent to be trusted by his superiors to carry out his duties properly. He is judged by results. There is, unfortunately, a good deal of difference of opinion as to what those results should be.

Owing partly to the incompetence of many magisterial benches, and partly to the wider duties which the police are called upon to carry out, the judicial duties of the Courts of Summary Jurisdiction are to a large extent being usurped.

Corruption among the police certainly exists. The Royal Commission which reported in 1929 held that its extent had been greatly exaggerated. It must be remembered, however, that they were mainly concerned with the methods of the police in the investigation of crime, and not especially with corruption. Further, their attitude, as might be expected of persons of such exemplary respectability, was somewhat ingenuous. For instance, after saying that they believe that the extent of corruption has been greatly exaggerated, they remark, "in not a few instances the allegations proceed from the very persons who have initiated the offence by offering bribes to constables and placing temptation in their way". By a similar process of reasoning it might be stated that accusations of blackmail almost invariably proceed from the very persons who, by having something shady in their past which has been disclosed to the blackmailers, have thus put temptation in their way. Corruption is a matter exceedingly difficult to detect, and it is a class of offence which is unlikely to exist in isolation. Anyone who acts for street bookmakers knows its prevalence. For example, a man had been summoned for using his premises as a betting house on and between certain dates. I asked him from

where the police had watched his house. He told me he had noticed two men hanging about a neighbour's garden, and had mentioned it to Sergeant Blank, who had said, "Nonsense. D'you think I shouldn't bloody well know if there was anything up?" There was no resentment. It was simply told as a fact. Sergeant Blank had always kept things right for him. In this particular instance the raid was carried out by an inspector and two or three young constables. It is the casual recognition of this kind of thing as a matter of course, which one continually comes across in practice, that is convincing.

Direct cash bribery is fairly common but in many cases the method of betting with the bookmaker on the simple system of receiving on winners but not paying on losers is followed.

It is, however, easy to make too much of the police irregularities which have been disclosed. The police as a whole are not corrupt, although in places where there is corruption it tends to spread throughout the local force. But the instances which have occurred in London, in Liverpool, and in Sheffield suggest defects common to the whole system. It is impossible to believe that the case of Sergeant Goddard was an isolated instance. The Liverpool and Sheffield cases certainly were not. These are not ancient history. The Liverpool cases were in 1927, the Goddard case in 1929, and the Sheffield cases in 1930. Like causes produce like results. The causes which produce police corruption operate all over the country. There are two main causes, and they are definitely connected.

The old distinction between things *mala quia prohibita* and *mala in se* is one of the few legal principles which the general public have grasped. With the increasing complexity of modern civilisation it is natural that many things, not wrong in themselves, have to be forbidden by law. But in addition we have obsolete statutes, such as our laws on gaming

and betting, on Sunday observance, and on licensing, which are not in accordance with the views of a large section, probably a majority, of the people. Some of these laws have become obsolete by the passage of time and the change of conditions, others are remnants of emergency legislation during the war. There are also an immense number of regulations having the force of law, made by Government departments under statutory powers, which have diminished the respect formerly held for law as law.

The result is that there is a great mass of punishable offences which are not generally regarded as criminal, or in any way disgraceful. Offences against the Betting and Licensing Acts are subject to heavy money penalties and seriously affect wealthy persons and companies. Prostitution, and in particular solicitation, presents a difficult problem for the police. In effect all they can do is to prevent its becoming a public scandal. This means that the matter has to be left entirely to the discretion of the individual officer. The Street Offences Committee of 1928 recognised that there was occasional bribery of officers by prostitutes. The position in this respect is exceedingly difficult. The prostitute, or at any rate the street walker, depends entirely upon the toleration of the police. Women who drink, as many prostitutes do, are most amazing liars. But apart from the evidence before the Committee and what I have been told by social workers I have myself seen and heard enough to convince me that matters are unsatisfactory. For example, there was an incident which happened one night two or three years ago near the London Pavilion. The theatre crowds had dispersed and there were not many people about. A woman of the better class prostitute class came out from one of the bars, half supported and half dragged by another. They went two or three yards and then the woman collapsed on the pavement, either drunk or drugged. Her friend tried

frantically to rouse her, but without success. As a couple of police came in sight crossing Piccadilly Circus another woman darted forward.

"Get her purse, you fool," she cried to the sober woman, who instantly took her advice and disappeared in the gathering crowd as the police came up. They picked up the prostrate woman and dragged her off roughly enough. I asked the woman who had spoken why it was necessary to take the purse, and she explained that there would otherwise be no money with which to pay the fine next morning, as the police would have taken it. I have had a good deal of experience as to whether or not people are speaking the truth, and I have no reason to doubt that she was.

It is not generally recognised what a wide discretion is exercised by the police as to what offences shall or shall not be prosecuted. For instance, boxing contests as at present conducted are definitely illegal. But since the police prevented the Driscoll *v.* Moran match in 1911 by having both parties bound over before the Birmingham Stipendiary they have not interfered with boxing, although the law has in no way been altered. The low percentage of convictions for drunkenness in certain towns is almost entirely due to the police policy in the districts concerned, and has little relation to the amount of drunkenness. The instructions recently given to the police in the Metropolitan area with regard to prosecutions for minor motoring offences provides another instance of a tendency which may become dangerous. There have been other instances in connection with the Irish Sweep.

Thus the police, and in many instances individual constables, often have a recognised discretion as to whether there is to be a prosecution. In a far greater number of cases officers can, if they choose, see or ignore offences. One of the best safeguards against

any abuse of this position is vigilance on the part of the justices and careful investigation of all cases. In practice we have the exact opposite.

As I have said before, the very name "Police Court" is unfortunate. It creates a false impression, or one that should be false. In *Underworld*, by Mr. Trevor Allen, the biography of a criminal, it is stated on page 295 :

"The police atmosphere dominates too strongly most police courts, making it difficult for the magistrate to bear in mind that he is not on the bench as a police official but as an impartial adjudicator."

It may be said that this is the biased view of a criminal, but it is at any rate that of a man who knows the facts. Moreover, Mr. J. A. R. Cairns, a Metropolitan magistrate, in an appendix to the book confirms this view.

Far too many courts are dominated by the police. In some courts it is the practice of the Chief Constable or Superintendent, as the case may be, to order witnesses out of court without any direction from the justices. It is a common thing to hear a police officer direct a witness to take his hands out of his pockets, or to stand up properly. It is not unusual for a police officer of rank to sit immediately beneath the magistrates, facing the body of the court. I have often seen such a one carry on a running commentary—inaudible, except in occasional fragments, to the advocates—with the Magistrates' Clerk during the progress of the case for the defence. It is not unusual for the public to be refused permission to enter a court during the progress of a case. This would doubtless be justified on the ground of disturbance, but it has in some courts been allowed to go far beyond what is necessary.

All this has a bad effect on police and public. But what is more serious is the growing tendency on the part of the magistrates to "support the police" as a

general principle. Many benches definitely consider it to be their duty to do so, and would be much surprised to hear any question raised about it. Some years ago I remember the Chairman of a certain bench, dealing with a charge of assaulting the police, say that it was a case in which they had grave doubt, but the police must be supported, and they would have to convict. Anyone who knows the courts must admit that this attitude, if not universal, is exceedingly common. I am not alone in finding that men charged with offences in connection with betting regard it as useless to plead "Not guilty" if the plea involves a contradiction of police evidence. Motorists are learning the same thing. The other day I was told by a solicitor with whom I was discussing the peculiarities of a certain court that he had been told in open court by the Clerk that the bench had inflicted a heavier fine because, by pleading "Not guilty" to a charge of dangerous driving, he had made them late for lunch. This was not, at any rate, from the motorist's point of view, a joke. This court is notorious for the way in which cases are rushed through.

I remember during the General Strike being instructed by a union to defend one of their members who was charged with assaulting an alleged blackleg. I met the man on the morning of the trial. He said he supposed he'd better plead guilty. I said he'd better tell me his story and I would decide. On his version, supported by witnesses, he was clearly innocent. He seemed surprised when I said he was to plead "Not guilty," and said, "But there's a police witness." I told him to leave it to me, and he got off, mainly because there was a Labour magistrate on the bench. This is a typical instance. I have previously referred to the case last year where a conviction of men who had pleaded guilty was quashed by the Court of Criminal Appeal on clear evidence that it

was physically impossible they could have committed the offence.

It is only necessary to read newspaper reports to see how often it happens that a man complains, say, of having been knocked about by the police, a constable is recalled and denies it, and, without further inquiry, the man is told he has made his case worse by making reflections on the police, and he is lucky if he escapes a heavier sentence as a result of his complaint. Supporting the police means, in practice, taking a constable's word whatever the evidence on the other side may be.

Soon after the above paragraph was written I defended two men charged with assaulting the police. The case was heard before a bench whose decision as to assaults on the police has twice recently been reversed on appeal. They decided to convict, and the men's previous convictions were read out, but both men so strongly protested their innocence that probably to avoid appeal, it was decided to re-hear the cases before a different bench. The result, on the same evidence for the defence, was that the charges were dismissed.

I am fully aware of the arguments by which the policy of supporting the police is upheld. It is contended that the police are a picked body of men and much more likely to be truthful than the criminals on the other side. This argument is opposed to the fundamental principle of English law that a man is held innocent until he is proved guilty, and it suggests a breach of the oath taken by the justices to decide according to the evidence without fear or favour. It is further suggested that if the magistrates dismiss police prosecutions the police will refuse, or at least be reluctant, to bring cases forward. It is true that such a tendency exists. I have myself more than once heard a Chief Constable or Superintendent threaten that he would never prosecute again, when a case

which he thought proved had been dismissed. But this shows that the discipline of the police is not what it should be, and that their attitude to prosecutions is wrong. The duty of the police ends with putting the whole of the facts before the court. The subsequent responsibility is that of the magistrates. If this were not so it would be better to let the police decide the cases for themselves without the intervention of the justices, as is done, I believe, in the United States in minor motoring offences.

The unduly close connection between the police and the Magistrates' Clerk's office, to which I have already referred, works in the same direction. When a clerk has unofficially advised as to the evidence to be given the tendency to support the police is increased.

In view of the great temptations to which the police are subjected it is exceedingly dangerous to put them in a position in which their own unsupported evidence will make a conviction certain.

The present position is this. There are a great number of offences which are not regarded as involving moral turpitude. Among these offences are some which concern large financial interests, as in the cases of betting and licensing. There is also in London and some other large cities the problem of prostitution, which is of necessity largely tolerated by the police, though this fact is seldom admitted. The police if they choose can suppress any individual prostitute, though not prostitution itself. All these offences are in practice dealt with by the magistrates.

The result is that the police, and as a rule not the superior ranks, but the rank and file, have the power to decide whether or not a person offending against the laws shall be convicted. The justices have, in effect, handed over their powers to the police by their practice of accepting police evidence as final.

This is placing altogether too great a strain upon

any body of men. It is easy to see that a constable, who would not dream of taking a bribe from, for instance, a thief, may think there is no particular harm in turning a blind eye to the activities of a street bookmaker. He knows the utter imbecility of the law. He also knows that the bookmaker has the sympathy of the vast majority of the people among whom he lives. To do him justice, the average constable is utterly indifferent to any risk from the hostility of racing men or race gangs. But he is not keen on the unpopularity which accrues to the officer who is unduly active in betting or licensing matters. A formal raid now and then to impress the authorities is one thing. Personal activity is quite another. And when by merely failing to see what is never thrust before his eyes he can, practically without risk, make some money it is no wonder that corruption begins.

Unfortunately, it does not end there. Although there are probably very few of the police who ask for, as against those who accept, bribes, there are some. It is a short step from this to blackmail, if indeed there is a distinction. The danger lies in the fact that, owing to the attitude of magistrates to police prosecutions, it is in the power of the individual constable to do as he pleases with the street bookmaker, the publican, and the prostitute. If he accuses them, they are certain to be convicted. It is not surprising that corruption so seldom comes to light. How can it be expected that it should do so? Both parties to the transaction have the strongest possible reason for preserving secrecy, and, except by chance, detection is almost impossible.

The matter may be summed up as follows. The police are exposed to temptation to a greater extent than at any time in the past, and unfortunately the safeguards are weaker than ever before. The deep conviction that all law-breaking was wrong, once almost universal, has gone, and naturally enough a

feeling has arisen that there is nothing very dreadful about conniving at the breach of laws which have little or no moral sanction. Opportunities for corruption and blackmail have increased immensely. In many towns a position on the Watch Committee is the reward of seniority, with the result that these bodies are far from active. And, worst of all, there is the practice on the part of the magistrates of supporting the police under any circumstances.

Another matter may conveniently be mentioned here, for at first sight it may not seem to confirm what has been said as to the justices "supporting the police". Some things are universally known to exist, although their existence is always officially denied. One of the most notorious is the connection between the number of convictions obtained by a constable and his promotion. A failure to get a conviction leads to a bad mark, in one form or another. It may be necessary to make it clear that it is not so much the number of convictions obtained by a constable as the fact that he has no failures to convict in his cases that helps towards promotion. This not infrequently leads to evidence being manufactured. To give an instance, I have been told too often of the "planting" of betting slips to have any doubt that it is frequently done. I do not wish to make the case seem blacker than it is. Slips are not planted on entirely innocent men, but a constable, knowing an arrested man to be a bookmaker's agent and expecting him to have got rid of the evidence, sometimes provides that evidence by putting slips in the prisoner's pocket. Similar things are done when houses are raided. I remember a case in which I was concerned where one of the accused told us in conference that he had swallowed the six slips which were in his possession when the police entered the house. In court, however, nine or ten slips were produced and said to have been found on him. The man could have had

no conceivable object in inventing such a story. I may perhaps add that I have learned these things not only when acting professionally, but from racing men met casually at boxing halls and other places, and from publicans and even the police themselves.

An instance of the way in which unconscious bias may affect an honest man's evidence is apparent in a plan in my possession. It was made by a police officer and actually used in a motoring prosecution. My tracing happens to be the one which was seen by the magistrates. On the plan a road 17 ft. 9 in. wide, which the prosecution contended was the more important, is shown as almost as wide as the other road, which was 42 ft. wide. Further to show the defendant in the wrong, a distance of 10 ft. between the track of his car and the wrong side of the road was shown as less than half a distance of 8 ft. 6 in., the distance from his proper side. In cross-examination I asked the officer who made the plan whether he considered it was drawn to scale. He replied that it was not, but it gave the general idea. The interesting thing about the whole business is that the measurements were marked on the plan, so that any one looking carefully at it could see easily enough how misleading it might be. In this particular case the motorist had fortunately taken a photograph of the vehicles on the road immediately after the accident, and the summons was dismissed on payment of costs (£6) by the *defendant*.

It may be asked why such things should be done if the magistrates always support the police. The reason is that even a Court of Summary Jurisdiction must have some evidence before it can convict. Where it fails is in testing and weighing the evidence.

It is rare for costs to be given against the police, however little ground there may be for the prosecution. In two recent cases in which I was concerned damages for wrongful arrest were recovered against the officers concerned, but in neither instance had the

magistrates ordered the prosecution to pay costs. It is true that in both cases the men were not legally represented and costs were not applied for, but any one not experienced in the courts would have supposed the bench would have granted costs on their own initiative.

The report of the Royal Commission on Police Powers Procedure (1929) found no evidence that the police pressed for the conviction of persons whom they believed to be innocent. Of the police as a whole it can safely be said that they would at once abandon, whatever the results to themselves, any prosecution in which they were satisfied that the accused was innocent. But that individual constables occasionally trump up charges I have no doubt. Even in my own limited experience a judge has twice confirmed my own opinion that this had happened. On another occasion I had been instructed to defend a racing man, a notorious bad character, charged with a certain offence. On the day before the hearing I was told by a magistrate that a respectable employee of his had told him how he had overheard a policeman say that he intended shortly to get the accused on this particular charge. The magistrate was very shocked and sent the witness to me. The only witness for the prosecution was the policeman in question, although there were admittedly several other independent witnesses who must have been able to corroborate. The constable denied the threat, but it was sworn to by the independent witness, who had no possible connection with the accused, and the case was dismissed. Another witness also spoke of a quarrel between the officer and the accused shortly before the alleged threat. On other occasions I have been satisfied that the police evidence as to the offence charged was quite untrue, although in fact an offence had been committed elsewhere. It should be noticed that none of these were cases of men who were com-

pletely innocent. But they had not committed the actual offence with which they were charged. The principle too often adopted seems to be that of the Scottish Judge, who is reported to have said to a prisoner, "Ye may be innocent or ye may be guilty, my mannie, but ye'll be nane the waur of a hanging".

The Commissioner's Report, however, goes on to say: "But responsible witnesses with experience on the bench have stated that there is occasionally a tendency on the part of the police, when they genuinely believe a prisoner to be guilty, to strain the evidence against him so as to secure his conviction." This is certainly true, and the word "occasionally" may be omitted. Several times I have known guilty persons escape in consequence of the prosecution being bolstered up by evidence the falsity of which was easily exposed. But it is easy to see that innocent persons may be put in grave peril by such means. The police usually find, or think they have found, who has committed a crime, before they start to obtain legal evidence against him. Unfortunately, they are apt to jump to conclusions. It is the magistrates, and not the police, on whom the responsibility for accepting or rejecting the evidence rests, but benches as a rule do not realise this, and merely "support the police". The disastrous result is that neither police nor magistrates feel any responsibility for a conviction. Each looks to the other. To quote again from the Report: "The corroboration of one constable by another often plays a large part in cases of this kind and this may increase the risk of a miscarriage of justice, even though an advocate for the defence can usually test the value of the corroboration by searching cross-examination."

What can be done by cross-examination is, however, much overestimated. And what if there be no advocate for the defence? As Mr. Bertrand Russell said a short time ago: "Most people have a

comfortable belief that miscarriages of justice are very rare, but I do not think that any means exist of knowing if this is the case or not."

Mr. Bertrand Russell is right. The means do not exist. The victim knows, and so do a few others, but that is all. The very few who know the facts seldom meet each other. This is especially the case with regard to the police courts. A police court solicitor practises in a limited area. It is seldom that he goes outside it, and still more seldom that he compares notes with advocates in other districts. The bar have a wider range, but much less knowledge of the facts. And professional secrecy to some extent prevents disclosure. As for the police, they are almost always honestly convinced that they are right, but if they were not they would be very unlikely to admit it after the event.

A matter that has been the subject of much discussion and controversy is the position of the police in relation to the investigation of crime, and in particular the questioning of suspected persons and witnesses. The case of Miss Savidge in 1928 aroused public attention, but the question has long engaged the consideration of the courts and of all concerned in the administration of justice.

There can be little doubt that the origin of the objection to the questioning of suspected persons can be found in the unreliability of confessions obtained under torture, as well as in the objection which civilised people must have to cruelty.

There are three main headings under which this question may be considered. First, as to the existence of the Third Degree; secondly, as to the obtaining of statements by other improper means; and thirdly, as to the remedy.

First, as to the Third Degree. The recent Commission in the United States reported the existence in that country of numerous instances of torture and

brutal violence used by the police to obtain confessions or evidence. It appears that the suggestions to be found in American literature of the prevalence of such methods are, broadly speaking, well founded. In all countries the police, or other similar persons, have used such methods in the more or less remote past. In many countries such methods are unquestionably still used. Many foolish parents use similar ways of getting children to confess. There is in the nature of things a possibility that the police in this country do not differ in this respect from their colleagues in other countries. The Royal Commission found that there was no evidence that the use of "Third Degree" methods by the police in the investigation of crimes and offences existed or would be tolerated by the police themselves. They are right in saying there is no evidence, in the strict sense, though it is difficult to see what evidence they thought it possible could be brought. Criminals would hardly be likely to come forward, and unless the police themselves confessed no one else could speak to the facts. Nevertheless I do not believe that actual violence or the threat of violence is used by the police for the extracting of evidence except in a very few cases, and probably these instances have become fewer still since the investigation of the Savidge case. It is probable, however, that cases have occurred. Allegations to this effect have been made by counsel in open court, and it must be remembered that the bar do not lightly make such suggestions. I have myself been told by counsel a most circumstantial and detailed story of an obstinate prisoner having been hit over the head with an office ruler, and a statement obtained from him while he was half-stunned. The barrister in question had undoubtedly been told the story, but whether it was true or not I cannot say. There was no apparent motive for falsehood, and nothing was said in court about it. I have heard similar stories from more or

less reliable people, but none which was either first hand or which could in any way be tested. I remember discussing this matter with a solicitor who regularly prosecuted for the police, and he had no doubt as to forced admissions. He mentioned a case where he had advised that the evidence was insufficient, and the detectives in charge of the case urged that it should go on, saying they would soon get the evidence out of the man once they had him in custody. Let the reader who doubts that the Third Degree occasionally takes place in England ask himself whether he would let any scruples stand in the way of getting evidence to prevent a man who had, for instance, criminally assaulted a child getting away scot free. Of course he wouldn't, neither would I. But the difficulty lies in the question whether the man *did* assault the child. It is fatally easy to convince oneself of the truth of one's own theory.

With regard to the Royal Commission's remark that they know of no instance where the allegations of counsel as to Third Degree methods have been proved or even seriously pressed, two points must be borne in mind. The extreme difficulty of proof, already referred to, is one. The other is the fact that although confessions illegally obtained are not admissible, yet facts obtained as a result of such confessions can be given in evidence. (See Stone's *Justices Manual*, 64th Edition, p. 261, and cases therein referred to.) The result of this is that it is of little practical use for the defence to press such allegations. A defending advocate is, or should be, concerned solely for his client, and should never fight issues which do not directly affect the defence. As an illustration of this, I was lately concerned in a case where the police evidence was, in my opinion, false. As, however, it did not suffice as it stood to prove the offence charged, I refrained from cross-examination, and submitted that there was no case to answer. The

justices decided otherwise, and I called no evidence and appealed, successfully, on the point of law. To fight the police on an issue of fact would have been dangerous, though the defence would have been forced to do so if there had not been money enough to appeal. As to confessions and admissions being commonly obtained by improper means, there can be no question. Even the Royal Commission say: "We have received a volume of responsible evidence which it is impossible to ignore suggesting that a number of the voluntary statements now tendered in court are not 'voluntary' in the strict sense of the word."

There appears to have been a certain amount of misunderstanding in the past with regard to what are called "The Judges' Rules" as to statements by suspected persons or by prisoners in custody. The misunderstanding was not easily justifiable, and was due to an attempt on the part of some, not all, police officers to strain the rules against the prisoner.

With regard to prisoners in custody, the view of Mr. Justice Avory, expressed in R. *v.* Winkle in 1912, that no police officer has any right whatever to put any question to a prisoner when he is once in custody, may now be taken as settled law. (R. *v.* Brown and Bruce, 1931, 23, Cr. App. R, 56.)

As to persons subsequently charged, there are two important points with regard to the admissibility in evidence against them of statements they have made. A statement must not have been obtained by any threat or promise made by a person in authority. Also, as soon as a police officer has made up his mind to charge a person with a crime he should administer the usual caution that the person is not obliged to say anything, but that whatever he does say may be given in evidence. The absence of a caution does not, however, necessarily make a confession inadmissible in evidence.

The usefulness of all rules and regulations depends

largely on the spirit in which they are observed. In this matter of confessions and admissions it is obvious also that the police themselves, whose activities are supposed to be thus regulated, are usually the only persons who can see that they are observed at all. It seems reasonably clear that the police, generally speaking, have always disliked the state of the law, and have as far as possible disregarded it.

Without attaching much importance to what is said in the newspapers about the police and crime, it is yet impossible to ignore the persistent allegations in certain popular journals that the police have been hindered in the investigation of crime by new regulations following the Report of the Royal Commission. These statements have been persistent, and the connection between the police and journalism is notorious. Reporters are constantly in touch with the police, and dependent to some extent upon them for early information. It is not long since the Lord Chief Justice was shocked to hear of the existence of a Press Bureau at Scotland Yard. The Commission's Report says: "Some of the C.I.D. (Scotland Yard) evidence, however, which we have heard in connection with this subject (i.e. inducing statements) leaves a somewhat disquieting impression upon our minds. There is, we fear, a tendency among this branch of the service to regard itself as a thing above and apart, to which the restraints and limitations placed upon the ordinary police do not, or should not, apply. This error, if not checked, is bound to lead to abuses which may grow until they bring discredit upon the whole police force."

Actually there has been no change whatever in the law. It is an obvious inference, however, both from what has appeared in the Press, from questions and answers in Parliament, and from statements made by the police, that there has been a change in practice, and that this change is resented. A typical instance

was on 17th February, 1932. The Home Secretary was asked by a Conservative M.P. whether: "In view of the large number of unsolved murder cases during the last two years he intended to review the restrictions upon the method of the preliminary questioning of suspects by police officers imposed as a result of the findings of the Royal Commission on police powers and procedure."

The Home Secretary said there had been no change in police practice about preliminary questioning of suspects. No complaints had been made by the police that their efforts to detect crime were in any way restricted.

After this reply Sir Charles Cayzer said that unless the present system was modified there was likely to be an increase in the number of unsolved murders in the future, to which the Home Secretary answered that the whole contention was misconceived, and there had been no change in practice at all. (See the *Daily Telegraph* of 18th February, 1932.) In *The Times* of 3rd May, 1932, will be found a report of similar statements and replies.

It is impossible for anyone not possessed of an official mind to doubt that, while the law has not been changed, the practice has. It is doubtful to what extent the police have ceased to ignore the Judges' Rules, but they are certainly much more careful. Police officials can hardly be expected to admit irregularities in the recent past after having denied them before the Royal Commission.

A good many motorists have some knowledge of this question of admissions. It is the practice of the police to ask motorists to make statements after collisions have occurred. The pressure brought upon them to do so depends upon their ignorance of their rights. In one case in which I was concerned a police constable went to a man's place of employment and then to his house. Finding him at neither place, the

officer left a message with the man's wife that he was to attend at a certain police station three miles away the following day without fail to make a statement to the Superintendent. The officer called again, saw the man, and although informed that he did not wish to make a statement, and that I had advised him that he need not, told him he must do so. The man came to see me as to whether he must go, and I verified the facts on the telephone from the police. I then got in touch with the Superintendent, who said there had been a misunderstanding. A summons was issued against this man, and there could be no doubt that it was always intended to charge him.

Statements are often taken from men while they are still dazed from the result of an accident. I heard an instance of this while in a police court the week before this was written in which a man had made a statement that he was travelling at thirty miles an hour at certain cross-roads. His version at the trial was that he approached the cross-roads at thirty miles per hour and that this was what he thought he had said. The statement was taken immediately after a serious accident in which the accused received a head injury and was severely shaken. It used to be the subject of comment by the prosecution that the accused had refused to make a statement, and it still goes against a man with the bench if he has not done so. Any comment by the defence on the manner in which the statement was taken or on its accuracy is regarded by all police and many benches as an insult. I have had a good deal of experience of this, both in cases in which I have been personally engaged and otherwise. So far has this gone that it has become a common practice to advise drivers to make no statement in case of an accident, and instruct them to explain their refusal by the requirements of their insurance policies.

It is fatally easy to misrepresent what a man says, especially if his statement is made by way of question

and answer, and taken down as a direct narrative. It is often amusing when some dispute arises as to what a witness has said in court, to note the discrepancies between the notes taken by the Magistrates' Clerk and those of the advocates for the prosecution and defence. Three different versions are quite common. What is to be expected when a note is taken by a police constable who, without any suggestion of conscious bias, is not likely to be prejudiced in favour of the defence.

The practice of detaining, without arresting, a suspected person, for the purpose of questioning him, which the Commission found to be prevalent in the Metropolitan district and elsewhere, has probably been abandoned as a result of the Commission's Report. The practice of arresting on a minor charge, pending inquiries into a more serious crime, still continues. It is technically free from objection in itself, but leads to abuses in the way of questioning and extorted admissions.

Admissions and confessions, even when apparently legally admissible, ought to be looked on with much greater suspicion than they usually are by magistrates. It should be remembered that at Assizes a judge often advises a prisoner to withdraw a plea of guilty, and the Chief Metropolitan Magistrate told the Royal Commission that he not infrequently acquits prisoners in spite of their having pleaded guilty. Cases such as the recent one in which prisoners pleaded guilty to a serious offence which they could not possibly have committed should always be borne in mind.

The main remedy for the abuses of the present system lies in the magistrates carrying out their duties properly. As the Royal Commission said, the testing of police evidence is essentially the business of the courts. The magistrates deal finally with the great majority of offences, and with practically all in the first instance. The Royal Commission state: "We were authoritatively informed that if a prisoner

complained in court of the manner in which any statement had been taken from him the Judge or magistrate would at once investigate the matter."

The following is an instance of how it was "investigated" in a case two or three years ago in which I was concerned for the defence of a receiver. A statement made by the thief was, quite improperly, used in evidence against my client, notwithstanding objection. What followed is quoted verbatim from a newspaper report, names being omitted.

"The alleged thief suddenly exclaimed, 'That statement you have just read is false. The detectives bummed and bummed me till I wrote that out. Mr. —— (the alleged receiver) did not know it was stolen.'

The Chief Constable: 'It is a serious thing to say. They could not "bum" your hand to write.'

The alleged thief: 'They were at me continually. I made that statement to get a rest.'

The Clerk: 'You have made a serious accusation against the police. Who do you say badgered you?'

The alleged thief: 'Another officer "bummed" me and I was called up and down from my cell several times.'

He agreed that (the alleged receiver) asked him and warned him against bringing any stolen property to him. That part of the statement was correct. 'Mr. —— (the alleged receiver) did not know it was stolen,' he repeated.

The Clerk: 'You were not asked to say anything against him, you were asked where you took it. You had no need to put that down. Were you asked?'

The alleged thief: 'I did not know what I was putting down; I was being asked question this and question the other.'

The Clerk: 'You wrote this yourself. What do you complain of?'

The alleged thief: 'First one calling me up and

then another. I got no rest. I had to make a statement before I could get a rest.'

He agreed that no inducement was made to him to incriminate (the alleged receiver).

The Clerk: 'There doesn't seem much to have been forced from you in that statement. You pleaded guilty voluntarily now, and you put that down about (the alleged receiver) yourself.'

The alleged thief: 'It's false, sir.'

The Chief: 'He is given pen and paper and he writes what he likes. There is a copy of the Judges' Rules hanging in the detective office, and has been for some years now. They are well known to us.' "

The newspaper head-note to the case is—"Accusation withdrawn. Thief closely questioned about complaint against police."

On 24th May, 1932, I was in court when a man, charged with housebreaking, was remanded and refused bail, notwithstanding that his wife was immediately expecting her confinement. He had not admitted guilt. The only ground for opposing bail given by the police was that he had not given them information as to what had become of missing property. A few days later he confessed, incriminating two other men, and was granted bail. As usual, when considering our penal system, it is with the magistrate that reform must begin. When they have been dealt with, the greater part of the work of reform will have been accomplished.

There is a way in which the police are unfairly handicapped in the investigation of crime. It must, apparently, be taken as settled law that the police have as a rule no power to compel any person to answer questions, notwithstanding that a crime may have been committed which they are investigating. I should have thought there was a duty at common law for every citizen to give such assistance, just as it is a duty to aid a constable in the exercise of his

duty when called upon, if the person so called upon is physically capable and without lawful excuse for refusing. The law, however, seems settled to the contrary. A witness can, of course, be brought to the court on subpœna or witness summons and compelled to answer questions, so far as such compulsion is possible, but this is only at the proceedings after a charge has been made. It is in the preliminary investigation that the police are at a disadvantage. They endeavour to get round the difficulty by bluff and threats, but this is an undesirable state of things.

The Royal Commission carefully considered this question, and came to the conclusion that " the only effective solution of this problem would be the grant by statute of powers under which a summons could be issued requiring a person, believed to be in possession of material information, to attend before a magistrate before the issue of process and to be examined on oath, with penalties for neglect to obey the summons or to answer questions put to him." They held, however, that they could not recommend special legislation to deal with witnesses who are unwilling to give information to the police. Provisions to this effect apparently exist in Scotland, and I doubt whether the Commission sufficiently appreciate the disadvantages of the present position of the matter. In the case of serious crime it is submitted that powers of this nature are urgently necessary, both to assist the police in their investigations and to avoid the probability of their using illegitimate means.

Police spies, " narks ", as they are sometimes called, are singularly unpleasant men. I have known a good many, none of whom was capable of telling the truth. Sometimes they are called as witnesses in licensing and betting cases, but as a rule they are used for getting information. What it is that gives these men their repulsive appearance I do not know, but those I have seen would easily have been picked out in any

crowd as the worst men in it. Their use is partly due to the difficulty in which the police are placed by being compelled to enforce laws, such as those against street betting, which are contrary to public opinion, or at least the opinion of the districts in which offences take place. Detection, in the Sherlock Holmes sense, does not exist in practice. The police detect crime, as a rule, by going round and asking questions, and " from information received ".

Criminals usually stick to the same crime to a remarkable extent. One man, for instance, will specialise in stealing ladders, another fowls, yet another parcels from motor-cars. I have known of a man who used to steal ponies from fields. He never took horses, nor ponies except from fields. Partly this is due to the necessity of knowing where to dispose of the proceeds of the theft. Partly, in all likelihood, it is due to some mental kink, similar to that which causes indecent exposure, for which I have known a man convicted over fifty times. The police can often tell at once who is likely to have committed an offence as soon as they know exactly what it is. I remember many years ago reporting to the police that the fire-grates had been taken from several empty houses. " Oh yes," said the officer, " that'll be Anthony ——. We'll fetch 'em back." Within three hours Anthony was in custody and the grates were returned.

Police knowledge of this peculiarity on the part of criminals sometimes leads to a miscarriage of justice, for once they are convinced of a man's guilt they are often not averse to strengthening the evidence unfairly. Magistrates are of little use as a check, for except in the large cities and towns they usually remember a man's previous convictions.

The extensive powers given to the police during and after the General Strike had a bad effect upon the Force, from which they have not even yet completely

recovered. Without actual experience in an industrial district during that period no one can realise how exceedingly bumptious and overbearing the rank and file became. Certain officers of higher rank shared this attitude. The working-classes have a long memory for grievances, and the hostility to the police which exists in many places is largely due to this cause.

That men in custody are occasionally knocked about in the cells there can be little doubt. There is probably much less of this than there used to be. Before the war I knew one station that was notorious in this respect. It has little bearing on the administration of justice, but the incredulous horror with which magistrates and many respectable people greet any suggestion of this kind is not shared by those who know the facts. The police are in absolute control in the station cells and yards, and except by accident no one but themselves can prove what goes on, for the word of criminals or those otherwise unpopular is practically never accepted.

Mr. Bernard Shaw in *Major Barbara* makes comment on what will happen to Bill when the police get him in the cells.

Those who remember the Suffragette disturbances before the war may recall that Lord Robert Cecil gave a considered legal opinion that there was sufficient evidence as to police behaviour to call for an Inquiry, but Mr. Winston Churchill, the then Home Secretary, refused to grant one. I have myself seen police take hold of Suffragettes near a Cabinet Minister's meeting, march them down a side street away from the lights, and deliberately abandon them to a crowd of hooligans. I would not have believed this if I had not seen it. Owing to similar things having occurred, a rescue party had been organised, and with a good deal of difficulty the girls were got away, but without any assistance from the police. I remember

with considerable pleasure that I trod on the face of a youth who kicked one of the Suffragettes.

Identification parades have often been criticised. They are sometimes unfairly conducted, and I have more than once known an accused person deliberately taken, when in custody, past a witness who was subsequently asked to identify him. Generally speaking, however, they are fairly carried out. The great weakness of all identification is, of course, the tendency of most people to pick out any man who resembles the man they are looking for. The Royal Commission of 1929 considered and rejected the suggestion of a " blank " parade, i.e. the use of a parade which did not contain the accused as well as one which did. I am satisfied that it is by far the best solution of a difficult problem, and the alleged difficulty of finding a sufficient number of persons should not be allowed to stand in the way.

A frequent cause of injustice is the way in which police reports on a convicted person are given to the Court, before the punishment is decided upon. As the Royal Commission said : " The fact that the sentence may be varied as a consequence of statements made by the police in effect puts into their hands a power which it is undesirable they should possess."

Apart from the damage which may be done by these preliminary inquiries to the character of a person who is subsequently acquitted, there is a danger in allowing statements to be made, often on hearsay evidence, and sometimes merely as expressions of personal opinion or prejudice on the part of an individual constable. It is impossible to doubt that the report is often used as a means of paying off persons disliked by the police.

One of the worst examples of this was in connection with the Mardy trials for unlawful assembly in February 1932. For instance, a police inspector, after giving a life history of one of the convicted men

which must of necessity have been largely based on hearsay, is reported to have said, "He pays frequent visits to Russia, and, although the source of his income has not been ascertained, it is only to be assumed that he is being well paid by Russia for his efforts to destroy the peace of this country, which he has apparently determined to undermine."

The same man was blamed for the fact that "respectable colliers have been compelled to dispose of their houses, which cost £250 to £350 to build, for a paltry £50".

It was also mentioned that he obtained 10,000 votes as a Communist at the last election, and even his children were not forgotten, the names of the schools at which they attended being given. This man protested against the report as prejudiced.

Another man was stated to have been "unemployed for the past five years because of his extreme views and being the cause of considerable unrest. He was a most impudent and arrogant type of man."

Of yet another it was said that he "was a native of Birmingham, and a man of extreme and antagonistic views. Although an expert carpenter, he preferred to spend his time organising street-corner meetings, over which he presided on a soap-box."

Samples of further police statements are:

"He was a fluent speaker, an art which he acquired by attending debating classes."

"Holds extreme views. Not the slightest regard for law and order."

"Would be a dangerous man in a crowd if the occasion arose."

"A well-conducted man of extreme views."

"No respect for law and order, much less the police."

"Sly, and would support any movement against the law."

"Low type. Most illiterate."

" Associate of extreme element. Flouts the police."

All these examples are taken from the *South Wales Echo and Express* of 24th February, 1932. The front of the paper has a headline covering six columns :

" Mardy agitators in pay of the Soviet."

The above instances were of course founded on political prejudice, but the surprising thing is that the Court should have allowed statements of this kind to be made.

In a case before the Birmingham Stipendiary on 24th April, 1932, a woman was found guilty of loitering with intent to commit a felony. After giving a good deal of hearsay evidence as to her previous character a police inspector added, " She has been suspected of blackmail for some time past."

This case is reported in the *Birmingham Mail* of 29th April, 1932. The above are typical examples. I have myself heard similar things on very many occasions.

Broadly speaking, the defects in our police arise from outside causes. They are not inherent in the force. The police should, as far as possible, be used only for the prevention of crime, and not for such purposes as traffic control, or as inspectors of various kinds. However inconvenient it may be for any political party to offend the well-organised and highly vocal " temperance " and anti-gambling votes, laws with regard to licensing and betting which are in conflict with public opinion should be repealed. Otherwise we are in danger of sharing the fate of the United States.

Police powers with regard to obtaining evidence should be reconsidered and extended under safeguards.

Most important of all, the connection between the magistrates and the police should be entirely severed, the name " Police Court " abolished, and the justices should carry out their proper duties.

CHAPTER IV

THE CORONER

In Halsbury's *The Laws of England* it is said: "The office of Coroner is of great antiquity, and no satisfactory account of its origin can be given."

It is even more difficult to give a satisfactory reason for its continuance. In days when casual corpses were often enough found lying about in highways and other places, and when there were no police to inquire into such matters, the Coroner and his inquest doubtless served a useful purpose. At the present time Mr. Ivor Brown, in *Marine Parade*, makes one of his characters describe the position accurately enough as follows: "There's an inquest. Fellow called a coroner, plus a jury of ordinary mokes and blokes, sits on the body. The Coroner is half a lawyer and half a doctor, and consequently both of these august professions regard him as a bastard pup and pass rude remarks about his kind. He's usually as vain as a film-star, and his main idea is to make some sententious remarks and get them quoted in the Press."

It is true that the Coroner is no longer obliged to summon a jury in every case, and that if any person has been charged before the magistrates in connection with a death, the inquest must be adjourned until the conclusion of the criminal proceedings, but it is difficult to imagine circumstances under which a coroner's inquest can be of any practical use. It is usually a source of grief and annoyance to all concerned, except the Coroner himself, and it often works very serious mischief.

As a rule there is not the slightest doubt as to the cause of death. When there is, it is not the Coroner, but the police, who find out the cause. The result of their inquiries is communicated, if they think fit, to the Coroner and his jury. It is necessary to emphasise this, for some people think that the police take action as a result of the finding of a coroner's jury. They do not. It is always the police who ascertain whether or not there is any question of foul play. If they do not go into the matter the Coroner never finds anything out. The series of murders committed in connection with the "Brides in the Bath" case furnish a good example. Jury after jury placidly accepted the story of the murderer and returned verdicts of death by misadventure.

The Coroner is usually seen at his worst when investigating a case of suicide. He is seldom content with finding the cause of death, which is usually obvious enough, but goes on to pry into and publish abroad every detail of the private life of the deceased which has any conceivable connection with his death. If there is any question of sexual irregularity the Coroner will drag it to light, read letters of the most private nature, and censure living persons, frequently upon hearsay evidence.

A typical example of this occurred two or three months ago. An inquest was being held by a coroner who was also a doctor on the death of a child aged two, who had died from gas poisoning. The father of the child gave evidence as to identity, and the following cross-examination took place. I quote from the *Daily Telegraph* report, omitting names.

"Mr. A—— said that the name of the mother of the child was B——.

The Coroner: "Your wife?"

"No."

"Is B—— a spinster?"

"Yes."

"And B—— is a daughter of C——?"

"Of C——."

"What is your real wife's name?"

"D——."

"What was her name before she was married?"

"E——."

"Who are you living with now?"

"A Mrs. F——."

"Do you keep a harem or what? Are you a Mormon? This is the third woman."

A—— said that he lived with Mrs. F—— at G——.

The Coroner: "Have you any children by her?"

"No."

And so on and so on. Can anyone suggest that any good purpose is served by this sort of thing? Similar cases constantly occur. And almost daily some coroner airs his irrelevant views upon cocktail habits, or the speed of motor-cars, or birth control, as if he were a Dean of the Established Church.

Another class of case in which the Coroner often causes unnecessary pain is in connection with the deaths of Christian Scientists and their relatives. Many coroners are themselves medical men. Most of them are accustomed to rely largely upon medical evidence. The difference between the attitude of almost all coroners when investigating a charge of negligence or mistaken diagnosis against a doctor, and when holding an inquest upon a person who has died after being treated by a Christian Science practitioner, is striking.

I have before me the reports of two inquests, both within the last few months. The evidence in one was to the effect that a young man had a fall, hurt his head, and complained of severe headaches. He consulted a doctor, who told him he was imagining his illness, and prescribed a medicine for stomach trouble. For over a month the doctor persisted that the trouble was due to imagination. Another doctor was called

in, who diagnosed brain trouble; the man was removed to hospital, and died of cerebral hæmorrhage. The doctor who made the post-mortem is reported to have said, that had the cause of the trouble been diagnosed earlier an operation might have brought relief, but more than that he could not say.

The Coroner recorded a verdict of accidental death, and said he did not feel he could make any comment. Apparently nothing would have been said about the mistaken diagnosis if the relatives of the deceased had not complained.

About the same time an inquest was held on a woman, aged twenty, who died from tuberculosis, from which she had suffered for five years. She had told a doctor who gave evidence that she hoped never to see another doctor. It was said that there would have been a " chance of a cure " if she had had the usual hospital treatment. A Christian Scientist gave evidence that she had visited the deceased daily. The following is an extract from a newspaper report:

The Coroner: " Did you think a doctor could have done anything? "

Miss ——: " No."

The Coroner: " There is no chink in your armour. What was your treatment? "

Miss ——: " We attach great importance to the mental state. We try to eradicate from the mind all impressions of fear."

The Coroner: " I don't want you to explain your theories. Shortly, your treatment is prayer? "

Miss ——: " Yes."

The Coroner said he appealed to Christian Scientists to consider where their teaching was leading them—particularly those with young children, as exemplified by this case.

The young woman in question was twenty years of age, so it is difficult to see why children were

mentioned, but the difference in attitude is the point to which I draw attention.

In another recent case an inquest was held upon a woman who had committed suicide. It appeared that a doctor who was attending her had diagnosed her case as one of cancer of the stomach, and had told her family, with strict instructions not to let her know. The woman, however, guessed the position and in consequence committed suicide. The post-mortem showed that the diagnosis was mistaken and that she was not suffering from cancer There was no censure of the doctor.

The only use a coroner's inquest ever serves is to give the solicitors for insurance companies an opportunity of getting evidence in cases where there may be claims by the dependents of the deceased under the Workmen's Compensation Act or otherwise. No one takes any notice of the verdict actually recorded. I have more than once known a coroner's jury find that a workman died from " an accident arising out of and in the course of his employment ", in the words of the Workmen's Compensation Act, thinking that by so doing they were helping his dependents in a claim for compensation. Actually, of course, no one would trouble to quote such a verdict. But it is always useful to know what witnesses have said.

Apart from this incidental point, inquests in cases of accident are waste of time. In railway or mining accidents, and in almost all cases of employed persons, proper inquiry is made by qualified experts as to whether any person is to blame. As to the actual cause of death there is scarcely ever any doubt. In road accidents inquiry is always made by the police, and if necessary there is a prosecution. In cases where there may be any criminal liability a subsequent trial is often prejudiced by what takes place at the inquest.

That a coroner's inquest can be of any use to the

police in the investigation of crime is, of course, impossible, since the only source of evidence is the police. But it may be a hindrance, and may also, in these days of popular newspapers, prevent a fair trial. There are no rules of evidence in a Coroner's Court, and all kinds of gossip is repeated there and published in the Press. Charles Dickens, in Chapter XVIII of *Great Expectations*, describes the reading aloud in an inn parlour of the account of an inquest, and of the effect upon the audience. A stranger comes in:

"'Well,' said the stranger to Mr. Wopsle when the reading was done, 'you have settled it all to your own satisfaction, I have no doubt?'

Everybody started and looked up as if it were the murderer. He looked at everybody coldly and sarcastically.

'Guilty, of course,' said he; 'out with it! Come!'

'Sir,' returned Mr. Wopsle, 'without having the honour of your acquaintance, I do say Guilty.' Upon this we all took courage to unite in a confirmatory murmur."

The stranger proceeds to point out that the witnesses had not been cross-examined, and that they knew nothing of the defence and concludes:

"'And that same man, remember,' pursued the gentleman, throwing his finger at Mr. Wopsle heavily, 'that same man might be summoned as a juryman upon this very trial, and having thus deeply committed himself might return to the bosom of his family and lay his head upon his pillow, after deliberately swearing that he would well and truly try the issue joined together between our Sovereign Lord the King and the prisoner at the bar, and would a true verdict give according to the evidence, so help him God!'"

It is necessary here to refer to the Pace case, which occurred four years ago. The facts are almost

incredible, and should not be forgotten. After an inquest which lasted for about four months, the jury returned a verdict that Pace died of arsenical poisoning administered by some person other than himself, and added that they thought the case should be further investigated. The Coroner then took the amazing, and probably illegal, course of directing the jury that they must name some person as the murderer. They then returned a verdict of murder against Mrs. Pace, the widow. She was in due course tried, and at the close of the case for the prosecution the Judge, after a discussion with the Solicitor-General, directed the jury to return a verdict of " Not guilty ". The reports of this case are well worth looking at by any one who has any doubt as to whether the office of coroner is worth preserving. There have been many inquests in cases where murder was suspected, but none which has proved of the slightest service.

Inquests with regard to motor collisions seem likely in the future to lead to unjustifiable prosecutions for manslaughter. In the past there has been a strong tendency to sympathise with the driver, but this will probably be reversed as a result of newspaper clamour. It is absurd that so difficult a question as the degree of negligence which may amount to manslaughter, should be left to such a body as a coroner's jury, directed by such a person as the average coroner.

The consequences of being put on trial for murder or manslaughter, even if acquitted, may of course be financial ruin. The cost of Mrs. Pace's defence was defrayed by public subscription. Mr. Norman Birkett was retained for the defence. Probably the result in that particular instance would have been the same in any event, but grim possibilities are apparent.

As we have seen, a coroner and his deputy appointed since 1st May, 1927, must be a barrister, solicitor, or doctor of not less than five years' standing. There is no prohibition of private practice, although

a coroner may not himself, nor may his partner, directly or indirectly act as solicitor in the prosecution or defence of a person for an offence for which such person is charged as a result of an inquest held by him. There does not, however, appear to be anything to prevent his acting in connection with civil proceedings, such as actions by the dependents of the deceased for damages or under the Workmen's Compensation Acts. It not infrequently happens that the same person holds the office of Coroner and Magistrates' Clerk, and thus a man may, in effect, come twice before the same Court, for the Clerk is far more important, as a rule, than the justices.

Apart from this, if, as constantly happens, the Coroner is a solicitor in private practice, he may have to investigate cases of the greatest importance to his clients. This is especially the case in mining and industrial districts, and strong feeling is often occasioned in such cases. Similar difficulties, but in a lesser degree, sometimes arise in the case of a doctor who holds the office of coroner.

These are not imaginary contingencies. They are constantly arising in practice, and add to the suspicion and distrust with which the law is regarded by the working-classes.

There is no reason why the office of coroner should not be abolished, and many reasons why it should. In addition to those before mentioned, there would be the saving of the salaries at present paid. In cases where no doctor's certificate of death could be given, a police officer not below the rank of superintendent might be empowered to grant one. This would be a sufficient safeguard, and would ensure that any doubtful case would be looked into, without the useless, and often harmful, publicity of a coroner's inquest.

CHAPTER V

QUARTER SESSIONS

QUARTER SESSIONS has never held a high reputation as a court of justice. In the counties its usefulness or otherwise at the present time depends entirely upon its Chairman. Where Quarter Sessions, as in Warwickshire, is presided over by an eminent barrister of strong personality, such as Mr. R. A. Willes, it forms an excellent court. There are, however, other courts where amateur lawyers, inadequately controlled by their clerks, deal out justice of a very inferior type.

In the boroughs where there is a Recorder matters are much better, though Recorders are sometimes far inferior to judges of the High Court, or even the County Court.

County Quarter Sessions are, in effect, conducted by the Chairman, who is elected by his fellow-magistrates and is often a layman. Cases are tried by Quarter Sessions, whether County or Borough, with a jury, but appeals are heard without one, although an appeal to Quarter Sessions in criminal matters is a rehearing, and fresh evidence can be brought forward. Many of the objections to magistrates apply to Quarter Sessions. One of the absurdities which sometimes arises is that an appeal from a Court of Summary Jurisdiction presided over by a certain magistrate may be to a Court of Quarter Sessions of which the same magistrate is Chairman. While the magistrate does not, of course, actually sit on the hearing of an appeal from himself, the matter is dealt with by his colleagues.

Quarter Sessions is a court peculiarly apt to be influenced by social position. One court in particular was for many years ruled in licensing matters by a certain noble lord, who was a bigoted teetotaller. On one occasion the license of a public-house was refused by the bench of which his lordship was Chairman, on the ground that the premises were not of the required annual value of £15. The owners appealed to Quarter Sessions, and called several professional valuers who swore that the premises were well over the required value. On the other side one valuer only was called, and his evidence was to the effect that the value of the house was £14 15s. yearly. Quarter Sessions dismissed the appeal. This happened many years ago, but the same spirit survives.

Owing to the fact that solicitors have, as a rule, no right of audience at Quarter Sessions, a case heard there is very much more expensive than one before a Court of Summary Jurisdiction. Generally speaking, to be legally represented at Quarter Sessions costs about eight times as much as it does at the police court. This is not due to the grasping nature of the legal profession, but to the extra work involved. For instance, it is necessary at Quarter Sessions for a brief to be drawn and copied, and a considerable fee paid to counsel. It is true that the services of junior counsel can often be obtained cheaply enough, but that is because they are desirous of obtaining experience. In most cases they are considerably less efficient than an ordinary police court solicitor. Experienced counsel are expensive.

In addition to the cost of briefing counsel, there is usually, at County Quarter Sessions, the expense of transporting the witnesses to the county town where the court is held, and keeping them there waiting sometimes for two or three days. The solicitor usually has to wait there as well. There are many

technicalities connected both with appeals to Quarter Sessions and the entering of cases for trial there.

In practice, Quarter Sessions is an obsolete court, the cost of which is out of all proportion to its usefulness. The extended jurisdiction of the Courts of Summary Jurisdiction has largely reduced the necessity of sending cases to Quarter Sessions. There is no definite principle as to what cases can be dealt with summarily, and which must go to Quarter Sessions. For instance, the most trifling case of "house-breaking" has to go to Quarter Sessions, but theft can by consent be dealt with summarily. Indecently assaulting a child under sixteen can be dealt with by the magistrates, but if the girl is over sixteen the case must go to Quarter Sessions or Assizes. Chairmen of Quarter Sessions of late have continually lamented that the justices should send them so little work to do. In addition, many cases are in practice improperly kept back from Quarter Sessions by the justices and their clerks. This ought not to be done, but we have to deal with things as they are. When to the high cost to the parties is added the expense of summoning Grand Juries and the maintenance of Clerks of the Peace and their staffs, it is plain that a considerable economy could be effected by abolishing County Quarter Sessions. Recorders might well remain as an Appeal Court in manner dealt with in the later chapter on appeals.

The only useful purpose served by Quarter Sessions was that otherwise some prisoners might have had longer to wait for Assizes. But now that a prisoner can be committed for trial at any convenient Assize this point has no value.

It is mainly the Bar that stands in the way of Quarter Sessions being abolished. It has for generations been the training ground of young barristers. Most counsel have held their first brief at Quarter Sessions, and have a sentimental regard for it. And

the influence of the Bar, both in and out of Parliament, is very great indeed. If Quarter Sessions is done away with some compensation will have to be given to the Bar. The most convenient would be to grant counsel an exclusive right of audience in the County Courts where the amount involved is over £20. It is usual to brief counsel in such cases now, for a solicitor can make about four times as much costs by employing counsel as by taking the case himself. In addition, he saves himself a good deal of trouble and responsibility.

Quarter Sessions, like the Coroner's Court, is a useless survival under modern conditions. The law manages to preserve more ancient monuments of this kind than any other institution, even the Church. It clings to them with sentimental affection. The wigs worn by the judges and the Bar are not merely ornamental. They are symbolic.

CHAPTER VI

APPEALS

It is obvious that courts constituted as are those presided over by the Justices of the Peace must often make mistakes both as to whether an accused person is guilty and as to the proper punishment. From all the Courts of Summary Jurisdiction, dealing with many hundreds of thousands of cases, it is stated in *The Justice of the Peace* for 2nd January, 1932, that there are only from two to three hundred appeals yearly. From a court which I know well, out of three or four thousand cases yearly there are never more than two or three appeals. Appeals are few, not because there is satisfaction with the decisions, but because of the high cost and the technical difficulties in the way of appellants.

There is an immensely higher proportion of appeals from the results of criminal trials conducted by High Court Judges, after preliminary investigation by the magistrates and the Grand Jury, than there is from the Courts of Summary Jurisdiction. This fact alone should lead to inquiry. In this connection I may mention that it was laid down over a hundred years ago, in the case of R. *v.* Hobson (1823), 1 Lew C.C. 261, that the greater the crime the stronger is the proof required for the purpose of conviction. Therefore, even were the magistrates as competent as a judge and jury their decisions are more likely to be wrong. In civil proceedings, involving property, it is comparatively easy and simple to appeal from the County Court to the Divisional Court, thence to the

Court of Appeal, and finally to the House of Lords. Only the last-named appeal is expensive. In the others the cost is generally about a fifth of that of the original trial. An appeal from the magistrates costs from eight to ten times as much as the first hearing. Since in the one case property, and in the other the liberty of the subject is involved, this seems obviously wrong. But the facts cannot be disputed. The position may perhaps be clearer when put in actual figures. To appeal from a decision of the High Court in a case where the costs are, say, £250, will cost £50 or thereabouts. Two to three guineas is about the average of police court charges. About £30 is the minimum which will be asked for an appeal to Quarter Sessions or by way of "Case Stated" to the High Court.

This question of cost is the first difficulty which a would-be appellant from the decision of the magistrates has to face. The Poor Persons' rules are of little or no value in connection with such appeals, for it is difficult to get the necessary certificate within the seven days for giving notice of appeal, and although solicitors do a good deal of unpaid work, they cannot be expected to be keen on getting the job of conducting an appeal for nothing. There are other difficulties with regard to Poor Persons which will be dealt with later.

It must be remembered that a successful appellant often does not get costs against the police. The practice in this respect appears to vary very much, but so far as I have been able to ascertain he fails to get costs more often than not. Out of the last four appeals to Quarter Sessions in which I have been personally concerned, all of which were successful, in one case only were costs granted. In the others each side had to pay their own.

The next difficulty, other than technical, which an appellant has to meet is the question of recognizances. Within three days after giving notice of appeal an

appellant must enter into a recognizance to prosecute the appeal and to pay such costs as may be awarded thereat. He may be, and usually is, required to find a surety or sureties. The amount of the recognizances and all questions as to the sureties and their adequacy are decided by the magistrates against whose decision it is desired to appeal. The sum generally fixed is £50. In practice recognizances can be, and often are, used to prevent an appeal. Magistrates have an intense dislike, almost a dread, of appeals. They and their clerks are well aware that their proceedings are frequently irregular, and irregularities have a way of coming out on the hearing of an appeal even when they are not the subject matter thereof. There was an illustration of the attitude of magistrates towards appeals two or three years ago, when the clerk of a certain court supplied copies of his notes of evidence to the solicitor for the police, but refused them to the appellant. Complaint was made with regard to this by counsel at the hearing of the appeal at Quarter Sessions, but the Chairman, a lay magistrate for a district adjoining that of the court referred to, made no comment. Many benches look upon the mere suggestion of an appeal as an insult. I remember being concerned in a case where the principal argument used by my opponent, a solicitor of long experience in police courts, was that there was no appeal. He got a decision from the justices in his favour, but on a case stated, a possibility they had overlooked, it was reversed by the High Court. I do not overlook the fact that, theoretically, any Court of Summary Jurisdiction may fix and take the recognizances and not only the court from which the appeal is made.

This matter of recognizances is a well-known grievance. It was brought up in the House of Commons as lately as 15th April, 1932, by Mr. Lyons, the Conservative member for Leicester, who pointed

out, according to *The Times* of 16th April, 1932, " that, as the law stood, it was entirely in the discretion of the justices how big a surety they would fix before a man whom they had convicted had got the right to have the decision tested. In some cases it put a complete prohibition against a man testing the decision of the Court ".

The reply of the Under-Secretary to the Home Office was a model of official fatuity. According to *The Times* report he said : " In regard to appeals to Quarter Sessions, he could understand injustice might occur in the cases of poor men who were asked to put up prohibitive recognizances before they could appeal, but, on the other hand, the majority of cases dealt with by Courts of Summary Jurisdiction were trivial in character, and unless there was some method of preventing purely frivolous appeals they would end by clogging the machinery of the courts and possibly place an undue burden on the public."

This is almost worthy of Mr. Clynes. Everyone who knows the Magistrates' Courts knows that injustice not only might, but actually does, continually occur. Why should men desire to appeal in cases of a trivial character ? It is a common practice of magistrates, in cases where they are in doubt, to impose a light penalty so that it shall not be worth while to appeal. This is especially so in betting, licensing, and motoring cases, where the defendants have, as a rule, sufficient means to appeal. But, as Mr. Oliver Stanley should be aware, there are plenty of better ways of limiting the number of what he calls frivolous appeals than by making them the luxury of the rich. The two or three hundred appeals per annum which are made at present obviously do not represent the number which might legitimately be made against convictions of a serious nature. Nobody but Mr. Oliver Stanley, and he only by inference, has suggested that the courts will be congested with appeals against fines for

having chimneys on fire if the practice as to recognizances is altered.

The High Court will not as a rule order security for costs of an appeal where the liberty of the subject is affected. (See Hood-Barrs *v.* Heriot (1896) 2 Q.B. 375.) Why should the magistrates be allowed to do so? Apart from convictions involving imprisonment or the possibility of it, matrimonial, bastardy, and ejectment orders are often of such grave importance that appeals should not be unduly difficult. It is only the poor man whom recognizances prevent from appealing. The question of how to prevent useless appeals is dealt with later. But it is significant that the upholders of the present state of things nearly always suggest that the removal of existing difficulties will inevitably be followed by a flood of appeals. Yet the same people say that there is general satisfaction with the Magistrates' Courts.

By degrees a right of appeal to Quarter Sessions against any conviction or order of a Court of Summary Jurisdiction has been granted. It is now possible for a person who has pleaded guilty to appeal against the sentence. Until 1925 this was not so, and many persons were forced to plead "Not guilty" to avoid putting themselves at the mercy of the magistrates.

An appeal to Quarter Sessions, except in the boroughs where there is a Recorder, is not as a rule worth very much, for it is only an appeal from one set of magistrates to another, the second being colleagues of the first. The appeal is a rehearing, without a jury. But, such as it is, the technicalities in the way are many. The notice of appeal must be given within seven days of the decision appealed against. It must be in writing, duly signed, and must be served upon the other party and upon the Clerk to the Justices. There are many technicalities to be remembered. For instance, service of notice upon the solicitor who acted for the other side on the hearing before the

magistrates is insufficient when he is not retained or employed on the appeal, even though he accepts service. (See R. *v.* Oxfordshire Justices (1893), 2 Q.B. 149.) A notice sent by registered post to the address set out in the summons is not sufficient if the address be incorrect and the notice does not reach the person in time. (See R. *v.* Essex Justices, 43 W.R. 378.) There are also points as to the contents of and signature to the notice, and in all cases the terms of the statute as to notice must be strictly complied with. Within three days after giving notice of appeal the appellant must, as we have seen, enter into recognizances, and, owing to the shortness of time, this is a point easily overlooked.

When notice has been given, and recognizances fixed and entered into, the appeal must be entered at the office of the Clerk of the Peace. The practice with regard to the time for entering varies at different Quarter Sessions.

We have seen in the chapter dealing with Quarter Sessions that solicitors have, as a rule, no right of audience there. A reform which could immediately be put into operation, and would not need legislation, would be for Quarter Sessions to give solicitors a right of audience on the hearing of appeals from the Courts of Summary Jurisdiction. This would greatly reduce the cost of appeal. There would be no counsels' fees to pay, no brief to draw, fair copy and deliver, and no conference to attend. A solicitor who has already conducted the case before the magistrates must be conversant with the facts, and has little more work to do, as a rule, beyond appearing on the hearing of the appeal. It would always be open for those who could afford it to employ counsel, and this would be the usual course. In many cases, however, solicitors would be willing to risk being paid their costs of an appeal if it did not involve taking on the liability for counsels' fees and doing the extra work connected

with the brief and instructions to counsel. A solicitor who briefs counsel is personally responsible for payment of the fees, even though he does not himself receive them from his client.

It will be apparent from what has been said that a person not legally represented will find it very difficult to appeal, even if he is aware of the possibility. By the time he has consulted a solicitor the time for giving notice has often gone by. I have known many examples of this, two during the last few weeks. Seven days soon go. Even if a solicitor is consulted, it is very difficult to advise on the chances of an appeal without having heard the evidence given in court. To obtain the Magistrates' Clerk's notes costs money, they may be refused, and they are usually very inadequate, even should the Clerk be willing to supply them. An appeal to Quarter Sessions being a rehearing, fresh evidence may be given, and, unless one has been at the first hearing, it is hard to foresee the chances in this respect.

Another method of appealing from the Magistrates' Court is by way of a Special Case. This is available on a point of law or a question of jurisdiction, and the justices whose decision is appealed against state a case, setting out the facts as they find them, for the High Court to decide the points which are raised. It is obvious that the magistrates, and in particular their clerk, are unlikely to state the case in such a manner as to get their own decision upset, if they can avoid doing so. In this connection the case of Edge *v.* Edwards, reported in the *Justice of the Peace* for 21st May, 1932, on page 350, may be referred to. Certain justices having heard and determined a case under the Small Tenements Recovery Act 1838 (i.e. an application for ejectment) were asked to state a case. The draft case was objected to by both parties, it being pointed out that the facts were wrongly stated. When the case came before the High Court, both parties

being agreed that it was wrong, it was sent back to the justices to be restated. When it came back it was still wrong, and the justices were ordered to pay the costs of the restatement. First the appellant and then the respondent were said to have been "stated out of court". Incidentally, this was a case where the clerk to the justices in question was unable to advise them, as he had acted as solicitor to one of the parties, and his place was taken by the clerk to the justices of another district. In this case, of course, both parties were represented by solicitors and counsel.

In practice the case is usually drafted on behalf of the appellant, submitted to the respondent's legal advisers for consideration, and finally settled by the justices. A person not legally represented is very unlikely either to know of this method of appeal or to be able to avail himself of it if he does. In addition where a conviction was quashed upon an objection not taken before the justices, costs were refused to the appellant. A person who appeals in this manner cannot also go to Quarter Sessions.

An appeal by way of Special Case bristles with technicalities. Within seven days of the date of the proceedings to be questioned, application in writing for a case to be stated must be left with the Clerk of the Court, and at the same time a copy of such application for each of the justices constituting such Court must be left. The justices may refuse the application if they consider it to be frivolous, but they must, if requested, give a certificate of such refusal. The applicant can then go to the High Court and apply for a rule calling upon them and the other party to show cause why a case should not be stated. When a special case is granted the justices have *three calendar months* within which to state it, but the applicant, on receiving the case from the magistrates, must transmit it to the High Court within *three days*, after first giving notice of appeal to the other party. Sunday is not excluded

in calculating these three days. These requirements are imperative and conditions precedent so far as the appellant is concerned, and in default the High Court has no jurisdiction to hear the case. So far as the justices are concerned they are directory only, and nothing particular happens on default.

The special case should contain all the points which it is desired to raise, and the High Court will not, as a rule, hear argument on points not raised before the justices. A case may be sent back by the High Court for amendment before it is argued, but what the parties or either of them can do in the absence of agreement to effect this is not clear. The High Court will rely upon the statement of the case by the justices, unless there is a patent defect on the face of it, notwithstanding an affidavit disputing the facts. (See Musther *v.* Musther (1894), 58 J.P. 53.)

Special cases have to be entered at the Crown Office for hearing eight clear days before the day on which they are set down for argument, and notice thereof must be forthwith given to the other party. Copies must be provided for the use of the judges at least two days before the day appointed for hearing.

Before the case is delivered to him by the justices the applicant is required to enter into a recognizance, with or without sureties, for such sum as the justices may think fit, to prosecute his appeal without delay, to submit to the judgment of the Court appealed to, and to pay the costs, if any, awarded. He has also to pay the fees of the Magistrates' Clerk. Should the High Court allow the appeal the appellant usually, but not always, gets his costs.

It is, of course, necessary to brief counsel to appear on the hearing of a special case, and the costs of each party average about £50 or thereabouts. An appeal by way of case stated is obviously out of the reach of most people who appear in the police courts. It is, however, often quoted to show how carefully the law

provides a method of appeal to meet every possible contingency. One is reminded of Mr. Justice Maule, some eighty years ago, when he pointed out to a labourer who was charged with bigamy that there was absolutely no excuse for his crime as all a husband had to do in order to get a divorce from a wife who had committed adultery was to promote a private Act of Parliament, which would not be likely to cost him more than a thousand pounds or so when the necessary formalities had been fulfilled.

For practical purposes the only ways of appealing in criminal cases from the decisions of the magistrates sitting as a Court of Summary Jurisdiction are as before mentioned to Quarter Sessions or to the High Court by way of Special Case. The decisions of the magistrates may in certain cases be questioned by way of Habeas Corpus, Mandamus, Certiorari, or Prohibition, but these remedies are applicable only when the justices exceed, or refuse to exercise, their jurisdiction.

Quarter Sessions may state a case for the opinion of the High Court when there has been an appeal to them from a Court of Summary Jurisdiction, and Certiorari, Mandamus, and Prohibition apply to Quarter Sessions in a somewhat similar manner as to the justices. With regard to cases dealt with by Quarter Sessions otherwise than in their appellate jurisdiction an appeal lies to the Court of Criminal Appeal in the case of every person convicted before it of a criminal offence upon indictment, or dealt with as an incorrigible rogue. The appeal is similar to that from Assizes or the Central Criminal Court.

The hardship arising from the difficulties and expense of appealing from the decision of the magistrates is almost universally admitted. Even the Home Office admit that injustice may sometimes occur. Those who know the facts go much further. Mr. Abinger, in *Forty Years at the Bar*, said: "There is,

unfortunately, no doubt that a great many people are wrongfully convicted, but have to suffer the penalty of not being able to prosecute an appeal before a Quarter Sessions." In the debate on the Poor Prisoners' Defence Bill in November, 1929, Sir Walter Greaves-Lord, K.C., M.P., said that the difficulty of appeal from Courts of Summary Jurisdiction was tantamount to a refusal of the right to the poor, and that he knew cases where grave injustice had been inflicted in the Magistrates' Court. The *Law Journal*, the *Justice of the Peace*, the *Week-end Review*, and other journals have dealt with the matter repeatedly. There is practical unanimity among those who practise in the police courts as to the need for cheaper and simpler appeals. I have myself personally known very many cases where the decision of the justices would probably have been reversed on appeal, had an appeal been possible. There are few things more distressing than having to tell a man or a woman that they must submit to injustice because to appeal against it costs more than they can afford.

Matrimonial cases with regard to separation and maintenance orders constantly come before the justices in the "police court". The issues to be tried with regard to desertion, cruelty, adultery, and the means of the parties are similar to those which give the Divorce Court so much trouble. Even disputed cases are often disposed of in a few minutes on the most flimsy evidence. Four thousand one hundred and eighty-eight men were committed to prison in 1929, the latest year for which statistics are available, for arrears under Wife Maintenance Orders. This question is dealt with in a later chapter, and it is sufficient here to point out that there is no kind of dispute in which more difficult points, both of fact and law, arise than in those between husband and wife, and in no class of case are the magistrates more often wrong. The Russell *v.* Russell case, which went to the House of

Lords, and as to which the judges of the Divorce Court, the Court of Appeal, and the House of Lords were about equally divided in their opinions, has frequently to be applied in the Courts of Summary Jurisdiction. During the week in which this was written Russell *v.* Russell was applied in three cases in one court, on different days. It is worth while to consider the position with regard to appeal from the decisions of the justices.

An appeal lies to the Probate Divorce and Admiralty Division of the High Court both on law and fact. In theory the appeal lies on fact as well as law, for the High Court may draw from the evidence a different inference of fact from that found by the justices. In practice, however, the appeal is heard on the notes of evidence supplied by the Magistrates' Clerk, and it is very rare for permission to be given for these notes to be supplemented by an affidavit as to the evidence actually given. The notes are often inadequate. It is probable that they are sometimes written up after the event. I have often known a dispute to arise in court as to what a witness has said. The advocates on either side and the Magistrates' Clerk have compared notes, and each has differed from both the others. Sometimes a subsequent reference to the reporters for the Press has shown that all were wrong. It is on such notes as these that the appeal is heard. If there is evidence on the notes on which the magistrates' finding can be upheld the High Court will very seldom upset it, even though they may say that they themselves might not have come to such a decision. It is the duty of the Magistrates' Clerk to make a note of the evidence, of the decision and the reasons therefor, and to furnish a copy on the application of either party. But such a copy has to be paid for, even by a "Poor Person".

The appeal itself is by notice of motion, which must state the grounds of the appeal. It is an eight-

day notice, that is to say, it must be served on every party directly affected and on the Clerk to the Justices eight days at least before the day named in it for the hearing of the motion. This notice has to be served, and the appeal entered by filing a copy of the notice at the Divorce Registry, within twenty-one days of the making of the order appealed against. At the same time as the notice is filed a duplicate copy of it, with two copies of the order appealed against and the summons, and of the Magistrates' Clerk's notes of the evidence and of the reasons for their decision, must be left at the Divorce Registry for the use of the judges on the hearing of the appeal. After this the parties wait for an uncertain time until the appeal comes into the day's list for hearing. It is, of course, necessary to brief counsel on such an appeal, which is heard in London.

The reader may, or may not, be surprised that the decisions of the magistrates in matrimonial cases are seldom appealed against. One or two peculiarities may be referred to. When a wife has obtained a decision of the magistrates in her favour she is entitled to the costs of an appeal by the husband, even though his appeal be successful. (See Medway *v.* Medway, 1900, p. 141.) And an order for such costs will be made even though the husband has been admitted as a "Poor Person" for the purposes of the appeal. (See Hope *v.* Hope, p. 125.)

With regard to more serious crimes tried at the Central Criminal Court, at Assizes and at Quarter Sessions there is an appeal to the Court of Criminal Appeal. If the Attorney-General gives his certificate that a particular case involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, an appeal will lie from the Court of Criminal Appeal to the House of Lords. The certificate in question is very rarely granted. An appeal to the

Court of Criminal Appeal lies without leave on a point of law, and with leave, either of the judge who tried the case or of the Court of Criminal Appeal, on other grounds. The appeal may be against the sentence only, and notice of appeal must be given within ten days of conviction. The prison authorities will usually give a convicted person help and facilities with regard to appeal, and it is unlikely that there are many cases in which an appeal ought to be, but is not, made.

The Court of Criminal Appeal have power to hear witnesses, to order the production of documents and other things they consider necessary, to refer special matters, such as accounts or scientific investigations, to a commission appointed by the Court, and to assign solicitor and counsel to any appellant who is without sufficient means. The Judge or the Chairman of the Court before whom an appellant was convicted must furnish to the Court of Criminal Appeal, when required, his notes of the trial and a report giving his opinion upon the case or upon any point arising in the case. Shorthand notes are taken on the trial of any person, who, if convicted, may appeal to this Court, and these notes are available for the use of the Court, and, on payment, of the parties. The Criminal Appeal Act was passed in 1907, and the gloomy prognostications of its opponents have proved ill-founded. There have been a number of successful appeals, which have prevented miscarriages of justice, and the existence of the right of appeal has made judges and chairmen more, not less, careful than before.

If any notice of appeal on a question of law alone appears to the Registrar of the Court of Criminal Appeal not to show any substantial ground, he may refer it to the Court for summary determination, and thereupon the Court, if they think the appeal frivolous or vexatious, may summarily dismiss it, without calling on any persons to attend the hearing.

As a rule, on the hearing of an appeal to the Court of Criminal Appeal, no costs can be allowed to either side. When, however, solicitor and counsel are assigned to an appellant who is without means the following rule deals with expenses to be allowed.

"As respects any appeal—

A fee not exceeding £2 2s. for a solicitor and a fee for counsel not exceeding £1 3s. 6d., or, if in the opinion of the Court the case is one of difficulty, not exceeding £2 4s. 6d., provided that the Court after the conclusion of the appeal may, if it thinks fit, certify that the case was one of exceptional length or difficulty and thereupon the fee may be increased to such sum as the Court, having regard to the length and difficulty of the case, may direct, but not exceeding £7 7s. for a solicitor and £11 for counsel."

The above is an extract from Statutory Rules and Orders, 1908, No. 247 (1). The almost insane inadequacy of a fee to counsel of £2 4s. 6d. in a case which the Court of Criminal Appeal consider to be "one of difficulty" needs no comment. It will be remembered that a frivolous appeal may be summarily disposed of without the attendance of the parties, so that the ordinary cases where £1 3s. 6d. is the fee must involve a point of substance.

The mischief of this kind of thing is that, as in the farce of Poor Prisoners' Defence, the general public imagine that proper provision has been made.

The easiest way of making appeals from the Courts of Summary Jurisdiction more generally possible would be to grant solicitors a right of audience at Quarter Sessions. This could be done by the Court of Quarter Sessions itself, without legislation. It would further be necessary to limit the power of magistrates to prevent appeals by imposing recognizances, if the cost of appeal were reduced, as it would be, by allowing solicitors to appear. This method, though simple, has the grave disadvantage

that Quarter Sessions, more often than not, is worth little as an appeal court. Quarter Sessions is becoming yearly of less use, and would conveniently be abolished in any general reform of our criminal courts and procedure.

In *The Justice of the Peace* for 2nd January, 1932, there is an interesting suggestion as to appeals from the Courts of Summary Jurisdiction being dealt with at Assizes instead of Quarter Sessions. It is pointed out that all appeals other than those from the Courts of Summary Jurisdiction are made to courts of higher authority. The weakness of Quarter Sessions, to which reference has before been made, is emphasised, as also is the fact that few defendants can afford the luxury of a Special Case. A Special Case, by the way, is often no more expensive than an appeal to Quarter Sessions. If an appeal to Assizes were to be on the same lines as at present to Quarter Sessions it would be quite as expensive as a Special Case. The writer of the article notes the greater expense as an objection, but thinks there would not be many appeals. He is on firmer ground when he says that if the change resulted in a considerable improvement in the administration of justice the question of expense ought not to prove an insurmountable obstacle. The other objection, which he considers more formidable, is that there would probably be greater delay. It is not clear why there should be, but, as he suggests, appeals might be heard at any Assize Court if time could thereby be saved.

In my view the expense of appealing to Assizes prevents this remedy from being an effective one. Apart from expense, there ought to be a vastly greater number of appeals than the two or three hundred yearly contemplated by *The Justice of the Peace*, although the existence of an effective method of appeal would greatly diminish the occasions for its exercise. Magistrates and their clerks are much more careful, even

now, when dealing with a defendant who can afford to appeal. But even so the number of appeals would be such as to cause congestion at Assizes if the obstacles at present standing in the way of appeals were removed.

Even a cheap and simple method of appeal will not alone be sufficient to get rid of the injustice caused by the Courts of Summary Jurisdiction. The magistrates and their clerks need reform as before indicated, and until such reforms are put into operation matters will be unsatisfactory, and the working of appeal procedure will be more difficult than it need be. But the best and simplest way of dealing with appeals from the Courts of Summary Jurisdiction is to give a right of appeal to the County Court. This might well form part of a larger scheme which would bring justice within reach of all classes. It could, however, be put in operation at once, and be combined with the abolition of Quarter Sessions.

There should be a right of appeal in all cases from the decision of the magistrates to the County Court Judge of the district. This right of appeal should be absolute and unconditional on a point of law. In other cases the magistrates should be empowered to require reasonable security for costs to be given, subject to appeal to the County Court Judge or Registrar as to the amount of such security. The security might be by way of recognizances or otherwise. The appeal should be heard on the notes of evidence taken by the Magistrates' Clerk, who should be bound to supply copies thereof to the Judge and to the parties upon payment. The Judge should have power to recall any witness or to call additional evidence if he thought fit, and he would not be bound by any finding of fact on the part of the justices. The County Court Judge should have power to vary a sentence, penalty, or order as he thought fit, or to quash it. The Judge should have power to increase

a sentence, and costs, both of the appeal and of the original hearing, should be in his discretion. Generally speaking, he should have powers somewhat similar to those of the Court of Criminal Appeal, including the power to deal summarily with a frivolous or vexatious appeal. There should be a further appeal from the County Court Judge, on a point of law, to the High Court.

Notice of appeal should be in writing, to be given within seven days as at present. It should only be necessary for the appellant to serve notice on the Magistrates' Clerk, whose duty it should be to convey the notice to the other party. The rules with regard to procedure should be as simple as possible, and there should be power to extend the time for appeal on proper grounds.

As solicitors have a right of audience in the County Court, expense would be saved. The County Court sits very much oftener and is more accessible than Quarter Sessions, so appeals could be heard much sooner. County Court Judges are men of judicial experience, accustomed to weighing evidence, and, an advantage not usually possessed by judges at Assizes, they are familiar with the manners and customs of the district where the parties live.

If this method of appeal were adopted it would be possible to abolish Quarter Sessions. The magistrates, reformed as before suggested, and with their decisions subject to appeal, might have their jurisdiction further extended to cover some of the cases which, quite illogically, at present have to go to Quarter Sessions. The more serious cases at present dealt with by Quarter Sessions would go to Assizes, as they ought to do now. The Recorders might conveniently be appointed as Commissioners to assist the County Court Judges in the work of appeals, very much as Special Commissioners are appointed at Assizes. Further Commissioners could be appointed

if necessary, but it will in any case probably be necessary to appoint additional County Court Judges, apart from the question of appeals.

At the same time as the right of appeal was dealt with, it might be possible to transfer matrimonial cases to the County Court, and to enable the Judge to deal with Divorce.

Certain alterations in County Court procedure would give the Judge more time. All cases up to £10, instead of £2, as at present, might be tried by the Registrar without consent, and he might also weed out the judgment summonses, leaving for the Judge those only in which there appeared to be a possibility of a committal order. It is continually necessary to remind those who speak of the congestion in the County Courts that London is not the whole of England. There are plenty of provincial County Courts which are by no means over-occupied. And it is often in these country districts that the magistrates are seen at their worst.

It would not be wise to limit the right of appeal to the more serious cases. When a fine is imposed there is the alternative of imprisonment if it is not paid, and in 1929 there were 8937 men and 2642 women who went to prison in default of payment of fines. Let any reader who doubts the necessity of making further provision for appeal consider the magistrates with whom he is personally acquainted, and ask himself whether he would be willing to put the question of his personal liberty at their uncontrolled discretion.

CHAPTER VII

JUDGES

THE independence of our judges is rightly regarded as an important constitutional safeguard. The jealous care with which it is watched is shown by the discussion and controversy raised in connection with the recent proposal for a reduction of their salaries. Our judges exercise the utmost care to guard against any suspicion that they may be influenced by any personal consideration in the trial of an action. It would not be surprising were a judge who was about to try an action arising out of a motor collision to disclose to the parties that he held railway shares, and ask whether they saw any objection to his dealing with the case. Many things are said in private, often truthfully enough, that would be indignantly denied in public. I doubt whether anyone, in whatever privacy or whatever class of society, has ever heard a suggestion of corruption made against any judge, whether of the High Court or the County Court. Occasionally some member of the Labour Party has ventured to remark on some obvious fact, such as the strong feeling of the judiciary against the immunity from legal proceedings conferred upon Trade Unions. He has usually been howled down as if for blasphemy, even by his own party, and not only in the House of Commons, where it is out of order to criticise the judges except upon a definite resolution moved for that purpose.

It is sometimes suggested that the immunity from criticism enjoyed by our judges is of recent growth.

To some extent this may be true, but an interesting case, which occurred in 1746, quoted in the *Manual of Military Law*, provides some evidence to the contrary. The case in question deserves fuller mention, and the following facts are taken from the *Manual of Military Law* (1914 Edition).

A Lieutenant Frye brought an action against the President of a court martial, and got a verdict for £1000 damages. Chief Justice Willes told him that he was at liberty to bring his action against any other members of the court martial, which he accordingly did. Writs were served on certain other officers at the breaking up of another court martial. As the *Manual* remarks :

" The members of this court highly resented this proceeding, and drew up resolutions, in which they expressed themselves with some acrimony against the Chief Justice, and forwarded them to the Lords of the Admiralty."

The Lords of the Admiralty laid the resolutions before His Majesty, who directed the Duke of Newcastle to write to the Lords of the Admiralty expressing His Majesty's great displeasure at the insult offered to the court martial.

Chief Justice Willes was not to be overawed, even by Majesty itself, and, to quote once again :

" The Chief Justice, as soon as he heard of the resolutions of the court martial, caused each individual member to be taken into custody, and was proceeding further to assert and maintain the authority of his office when the following submission (signed by the President and all the members of the court martial) was transmitted to him : 'As nothing is more becoming a gentleman than to acknowledge himself to be in the wrong, so soon as he is sensible he is so, and to make satisfaction to any person he has injured : we therefore whose names are underwritten, being thoroughly convinced we were entirely mistaken in

the opinion we had conceived of Mr. Chief Justice Willes, think ourselves obliged in honour, as well as justice, to make him satisfaction as far as in our power.' "

The submission proceeded to set out a humble and complete apology. On its reception in the Court of Common Pleas it was read aloud and ordered to be registered as a memorial, the Chief Justice grimly observing, " that whosoever set themselves up in opposition to the law or think themselves above the law will in the end find themselves mistaken."

It is of vital importance that there should be no shadow of interference with the judges in the exercise of their duties on the bench, and there can be no doubt that the spirit manifested by Mr. Chief Justice Willes would be equally apparent at the present day under similar provocation. But it cannot be of advantage that any body of men should be placed above all criticism to the extent that His Majesty's judges are at the present time. That no suggestion of corrupt bias, direct or indirect, should be permitted, is right. That a kind of taboo should be placed on any public comment which indicates, however faintly, that a judge might be unfair as well as mistaken is not in the public interests.

One result of this exaggerated respect for the judges is the timidity of counsel, a matter which is taken for granted by solicitors, but which often astonishes and sometimes disgusts lay clients. The General Council of the Bar have definitely laid down the duty of counsel thus :

" According to the best traditions of the Bar of England, a barrister should, whilst acting with all due courtesy to the tribunal before which he is appearing, fearlessly uphold the interests of his client without regard to any unpleasant consequence to himself or to any other person."

Many barristers always act in accordance with this

tradition. Many, however, do not, though I do not suggest that their timidity is consciously in their own interests. As a rule they succeed in convincing themselves that their caution is for the benefit of the parties they represent. The usual behaviour of counsel is, however, indicated by the shocked surprise of the Lord Chief Justice when Sergeant Sullivan, in a recent case, used the word " insist ". That there was nothing improper in his insistence was shown by the approval subsequently displayed by the Court of Appeal.

Innumerable anecdotes are told of the exchanges between Bench and Bar in days when the spirit of the Bar was more independent than it usually is now. They are, however, as well known to the lay public as the lawyer. The following story, which was told me by a solicitor who said he was present in Court, may be new to some, as it is alleged to have happened only a year or two ago. A certain judge, much given to sharp comments on all matters not to his liking, had fallen foul of an Irish barrister. Some weeks later, at Assizes, the Irishman, during some temporary interruption, motioned to the prisoner in the dock to sit down, which he did. The Judge, when his attention was recalled, saw this and in a voice of thunder asked the prisoner how he dared to sit down. The trembling man replied that Mr. Blank had told him to do so. The Judge fixed counsel with his glittering eye, and in the suave tones that with him preceded thunder inquired :

" I should be glad to know, Mr. Blank, by what authority you ventured to tell the prisoner to sit down ? "

The Irishman rose, unperturbed.

" The point which your Lordship raises," he began in his best forensic manner, " has not, so far as I have been able to ascertain, been directly dealt with in the English courts. There are, however, certain cases which may indirectly throw light upon the matter,

and before addressing your Lordship further, I should like to call your Lordship's attention to these authorities." Stooping, Mr. Blank picked up and put on the desk before him a number of volumes of the Law Reports. The Judge saw that he had been spoofed, and after a moment of indecision, during which an apopleptic fit was narrowly averted, he muttered, " Some other time, Mr. Blank, some other time," and proceeded with the case before him.

The judges themselves have no illusions as to judicial infallibility. Even in an earlier generation caustic comments were sometimes made, and the story of an address drawn up to be presented by the judges either to the Crown or to Parliament is well known. It had been drafted, and was to be approved. The reader began :

" Conscious are we of our own shortcomings——"

" That won't do," interrupted Mr. Justice Matthew, " conscious as we are of *one another's* shortcomings."

Recently, however, we have had a good deal of judicial comment by one court upon another The Court of Appeal and the Court of Criminal Appeal were in fairly open disagreement as to their relative standing, and talked at each other to some extent. Then the Court of Appeal, in reversing the decision of a High Court Judge, a member of the Court of Criminal Appeal, used such language that many people expected the Judge in question either to resign or retaliate.

Following this we have had a judge of the King's Bench Division expressing in open court his view on what he considered the misguided policy of the Court of Criminal Appeal, a challenge which that Court appeared to accept with considerable pleasure, judging from the reported remarks of two eminent members thereof. The Court of Appeal itself, in allowing an appeal from the aforesaid King's Bench Judge, commented freely on what he had said, with the result

that the Judge in question administered what he described as a " public rebuke " to a Lord Justice of Appeal.

So the matter stands at the time of writing. What has taken place is not altogether edifying, but it may have the effect of removing the unnecessary halo which has hitherto rested upon every judicial brow. Counsel may display greater courage, and the Press allow themselves a little more latitude than they have done during the last few years.

The quarrels with judges in which the late Sir Edward Marshall Hall took part are well known to the general public, both through the newspapers and through the *Life* written by the late Mr. Edward Marjoribanks. The learned author attributed a falling off in Marshall Hall's income to these quarrels. I very much doubt whether this was so. The frequency of the " scenes " and the reduction in income were probably due to the same cause, failing health. The fact that Marshall Hall was willing to face a quarrel with a judge in what he considered to be his client's interests was what brought him to the front. Counsel who are prepared when necessary to stand up to a judge are not common, and are always marked and sought after by solicitors. If they have no other quality than courage of course they do not go far, but they get their chance.

There are many judges who are influenced by nothing but the evidence before them and the arguments based thereon. But it is idle to pretend that it makes no difference before which judge a case, whether civil or criminal, is tried. Those who think otherwise should go to Assizes and watch the wire-pulling and scheming that goes on to ensure, or to prevent, a case coming before one judge rather than the other. I am not suggesting that gossip should be regarded as evidence. But no one can listen to junior barristers who have not yet learned the virtues of

discretion without hearing some startling things as to how cases are sometimes dealt with. Naturally, if one directly questions a junior barrister on this point he at once becomes a model of discretion An old barrister's clerk in a mellow mood of reminiscence will, however, make anyone's hair curl. It is only necessary to read the public comments occasionally made by one judge upon what another has done or said to realise that mistakes are made, and serious ones. A short time ago a judge of the Court of Criminal Appeal, speaking of a trial at Assizes, said that it seemed in various respects to have been most unfortunate and unsatisfactory, and described certain evidence as " quite ludicrously unsatisfactory ".

I believe that our judges are competent and just. They are, however, human. And the tendency to regard them with a reverence that properly belongs only to Royalty is likely to give rise to many evils.

CHAPTER VIII

JURIES

MR. NORMAN BIRKETT, K.C., addressing the Court of Appeal in connection with a recent Turf libel action, said :

" Juries are notoriously uncertain, and what one jury might decide another jury on the same facts might decide differently to-morrow."

Mr. Birkett was the leading counsel for the prosecution in the trial of Alfred Arthur Rouse, and he has had great experience of juries.

Mark Twain long ago carefully considered the jury system in an article, at the end of which he came to the conclusion, so far as I can remember, that only a congenital idiot, who had been deaf, dumb, and blind from birth, could really be qualified as a juryman.

Mr. Rodger Napier, in an interesting pamphlet lately published in the Criterion Shilling Miscellany, has inquired into trial by jury from a layman's point of view. The title of his pamphlet is *Murder by Jury*, and to a considerable extent he justifies it. His arguments, however, as is usual with laymen, are sometimes clever but unfair.

It is, of course, notorious that in civil cases no party who believes himself to have a good case ever asks for a jury. The only exception to this rule is where a certain winner wishes to swell the amount of the damages. Such an exception is more apparent than real, for the real issue is how much the damages are to be. In December 1931 a case was reported in *The Times* in which three separate juries, dealing with

the same evidence and instructed by a different judge on the third occasion, had returned verdicts so perverse that the judges had refused to accept them. Not long ago at Assizes I asked a solicitor friend why he had settled a running-down case in which his client appeared to have an excellent defence. He said the manager of the insurance company which had instructed him would never fight since an experience when serving on a jury in an action for damages for personal injuries against a motorist. The manager told him the jury had retired, after a trial in which the Judge had summed up strongly against the plaintiff. When they got into the room the foreman said:

"Well, gentlemen, how much?"

The manager gently expostulated, saying there seemed to him to be insufficient evidence. The foreman stared at him and said with astonishment:

"Evidence! What more evidence can you want? Ain't the poor chap lost 'is leg?"

Yet all serious criminal charges are tried with a jury, with the result that innocent men are sometimes convicted. How often this occurs no one can say, for Judges and Recorders, knowing what juries are, usually strain every possible point against the prosecution, and thus many guilty men are acquitted. The position would be farcical were it not for the tragedy often involved.

Personally, I have wherever possible adopted the rule of advising consent to a summary trial by the magistrates when a client was certainly innocent *and* had the means to appeal if convicted. This gives the benefit of a trial by a Recorder sitting without a jury should appeal be necessary. If, as often happens, a man is innocent but poor, it is often hard to decide what is best.

Should, however, the accused be guilty, or probably so, it is better to go to Quarter Sessions and be tried

by a jury. The risk of a heavier sentence is not great, and the chances of acquittal are immensely increased. Of course, this rule applies only in boroughs where there is a Recorder. In counties one has to be governed by what one knows of the particular bench and its clerk.

Jurymen, on the whole, are not as bad as magistrates. They are samples of the average man, while magistrates are deliberately chosen from political partisans. Moreover, jurymen are not allowed to hear things that are not evidence, as magistrates often do, and they usually have the advantage of hearing a Judge or Recorder sum up and direct their minds to the issues involved. It is true that a lay Chairman of Quarter Sessions will sometimes sum up very inadequately, but he is kept in check by the presence of the Bar. And there is a public summing up, not a retirement to the magistrates' room to discuss hearsay and gossip and look at the police proofs of evidence, as too often happens with the justices.

But to say that a jury is better than the justices is not high praise, nor does it imply that they are fit to decide the serious issues which are left to them to decide. It is true that they convict fewer innocent men than do the magistrates. But they convict some who are innocent, and that they do not convict more is secured at the price of the acquittal of many who are guilty.

With regard to this question of guilt or innocence the solicitor or his clerk is almost always the best judge. He is the only one who is in a confidential relation with the accused. He is told much more than the barrister, most of whose information comes through the solicitor. The judge and jury know only what is brought forward in court. However capable a judge may be, and however great his experience, he very seldom has the opportunity of verifying his conclusions. And without this opportunity he

may be steadily going wrong in his judgment of character throughout his judicial life. A solicitor in busy practice, apart from what he is told in confidence by his client and the witnesses, usually has many opportunities of checking the facts of a case from other people whom he meets professionally. If the solicitor has a taste for, say, racing or boxing, and mixes with the sporting fraternity on equal terms, he can almost always learn the truth if he wishes to do so. Not that racing and boxing men are themselves criminals, but they are in touch with all classes, go everywhere, and know what is going on.

Juries have in the past been a safeguard to the ordinary citizen against the unfair influence which the executive can sometimes use upon the judiciary. It may be that the day has not yet come for giving up safeguards of this kind, notwithstanding the exceedingly great care with which the judges are guarded against outside influence of any kind, and the high tradition of independence held by our judicial bench.

A famous instance of how a jury may preserve public liberty is to be found in the trial of the Seven Bishops in 1688. In that case two judges summed up in favour of the Crown and two in favour of the Bishops. The two who had summed up against the Crown were soon afterwards dismissed; but it was too late, for the jury had found the Bishops "Not guilty".

It is doubtful whether liberty may not better be secured when persons are tried by independent judges, sustained by the magnificent tradition of the English bench, rather than by juries who are often "class conscious" and swayed by political prejudice. We are, however, at present concerned with ordinary offences, as to the criminality of which there is general agreement, rather than with those which have any political flavour. I do not think any one who has

seriously considered the matter can doubt that the verdict of a jury is very likely to be wrong.

There have been striking instances in which juries have been proved to be wrong in cases of the most serious nature. The Beck case, that of Oscar Slater, and the recent instance in which Mr. Wallace was found guilty of murder by a jury and saved by the Court of Criminal Appeal, are known to everyone. And how many times they have been wrong without correction can never be known. Juries are much more likely to be prejudiced now than in former times, for they are almost certain to have read reports of the proceedings relative to the crime either before the magistrates or in the Coroner's Court. Often enough before the magistrates, and almost invariably at an inquest, things are said, and reported, which are inadmissible as evidence. In the Rouse case a mass of evidence as to the immoralities of the accused was given, though objected to, before the justices, but not at the trial. In all probability this was worse for Rouse than had it been given in evidence before the jury, for then the defence would have had a chance to deal with it. As it was, although Mr. Finnemore and Mr. Marshall, the counsel for Rouse, were well aware that every member of the jury had almost certainly read what had been said about their client's adulteries and illegitimate children, they could say nothing in answer.

I have myself had similar experience in a case of attempted murder, where evidence given before the magistrates was rejected by the judge at the trial. In this instance, as it happened, the wife of one of the committing magistrates was actually on the jury, and escaped challenge through her name being misheard.

It is a choice of evils as to what should be done to avoid the prejudice caused by the publication of the evidence given at preliminary proceedings. Publicity in the administration of the law is one of the

greatest safeguards against abuses. Probably the best compromise would be for the public to be admitted to the proceedings but to forbid reports to be published in the newspapers. The jury which tries the accused does not see the depositions, so no serious harm would be done by the improper admission of evidence before the committing magistrates.

Apart from their being prejudiced by having read reports of the preliminary proceedings, juries are very liable to be misled by appearances, just as spectators at boxing matches usually think a showy boxer who slaps his opponent's shoulders and arms with the open glove is inflicting a lot of punishment. They tend to watch the advocate rather than the witness. Very few people can tell from a man's appearance and manner whether he is speaking the truth or not. Some doctors are fairly good at this, but the average man or woman is hopelessly bad, and usually mistakes innocent nervousness for conscious guilt.

The Rouse case provides several examples of ways in which it is possible for juries to be misled. This case occurred so recently, and gave rise to so much discussion, that most people took sides over it. It is difficult to get dispassionate attention to points arising in it. Let me say at once that I think it probable that Rouse was guilty. I do not even wish to raise the question as to whether the evidence was sufficient to prove his guilt so that no real doubt could remain. That has been argued very fully, both in the legal and the lay Press. The *Law Journal* went so far as to say, " We are by no means so certain as we were that a man innocent of murder could not under our law be found guilty of it." I may, however, mention, what is not generally realised by the lay public, that this question was not settled by the Court of Criminal Appeal. The Lord Chief Justice said, in delivering judgment :

" It is important to observe that the only ground

of appeal is that there was no case to go to the jury."

The first point is one to which I have already referred, the fact that mistaken inferences are often drawn from a man or woman having told a confused, lying story in the witness box. Every common law clerk knows the way in which witnesses will sometimes lie in the most aimless way when their proofs of evidence are being taken. Statements are made which are recklessly untrue, yet without any possible motive. It is generally agreed that Rouse in the witness box did a great deal to hang himself. In the very beginning of his evidence he made contradictory statements. Referring to a certain incident he said (I quote from *The Trial of Alfred Arthur Rouse*, edited by Miss Helena Normanton):

"It was on the 15th April; I believe it was February; 25th May I think it was."

The inference drawn by the average layman would be that a man who gave such exact but contradictory dates was lying as to what happened. Yet Rouse was not lying. The incident referred to was a severe head wound suffered in the war, and the actual date was 26th May. But similar wild nonsense on other matters almost certainly made the jury think Rouse had a murder to conceal.

The next points are connected with the "expert" evidence. Judges do not take much notice of experts. They have heard too many give evidence in direct contradiction of each other in civil cases, and they have, too, usually had experience at the Bar of being let down by "experts". But juries are apt to take a good deal of notice of what is said positively by a man with impressive qualifications. Any counsel or solicitor would attach much more importance to Mr. Isaacs' definite statement of fact that he had invariably found the nuts loose after an intense fire than to his inability to give the co-efficient of the expansion of

brass when he was cross-examined by Mr. Birkett as to his scientific explanation of the fact. But a jury would take a different view. They would see that the witness had been tied in a knot in cross-examination, and would probably reject his evidence *in toto*. Yet Mr. Isaacs was right as to his facts, and the scientific explanation will be found in Appendix VI to *The Trial of Alfred Arthur Rouse*. Had Henry Snowden Rowell, whose statement is there set out, given evidence at the trial, he would undoubtedly have impressed the jury, for he was a Chartered Civil and Mechanical Engineer, and in addition:

"An officer of the Order of the British Empire; a Doctor of Science, London; Associate of the Royal College of Science, London; Whitworth Scholar; Fellow of the Institute of Physics; Member of the Institution of Mechanical Engineers; Member of the Institution of Automobile Engineers; Member of the Society of Automotive Engineers, New York; Fellow of the German Society for Technical Physics, etc."

He had also been for some years a member of the Screw Threads Committee, British Engineering Standards Association, had taken out several patents on screw threads, and had made a special study of the circumstances which cause nuts to come loose. For eighteen months he had been engineering director of a large bolt and nut manufacturing company, and he was then consultant to that company.

Not only Mr. Rowell, but a number of other witnesses of scientific and engineering eminence would have given evidence that the view of the prosecution as to the loosening of the nuts was mistaken.

Sir Patrick Hastings applied for leave to call this further evidence on the hearing of the appeal, pointing out that he was seeking to establish the theory of the defence as scientific fact, and not as a matter for surmise. Leave was, however, refused. Technically,

having regard to the ground of appeal and the fact that, as Mr. Justice Avory said, both views on the matter were before the jury, there cannot be any doubt that the further evidence had to be rejected as the law stands. But it is impossible to say what difference it might have made to the verdict of the jury had they heard the further evidence, and had Mr. Birkett's cross-examination failed, as it would have done, on this point. For, rightly or wrongly, it would probably have led to the jury's rejecting the whole of the evidence of Colonel Buckle, the prosecution's expert.

Another thing is of some interest. Mr. Justice Talbot, in his summing up, told the jury that it was quite impossible that they could attach any serious importance to the presence of one human hair on the mallet which was found near the car. The suggestion of the prosecution was that Rouse had stunned his victim with the mallet. In the course of the trial Mr. Birkett, opening for the prosecution, laid considerable stress on the hairs on the mallet, a good deal of evidence was given with regard thereto, and Rouse was cross-examined at some length as to how the hairs could have got on the mallet. It is almost needless to say that he made some idiotic suggestions as to his wife having been trained as a hairdresser, and having occasionally cut his hair, which might have got on to an old shirt which might subsequently have been used as a rag for cleaning the car.

There is a simple and probable explanation of the presence of hairs on the mallet which was not even suggested, though Rouse accidentally came near it. In dry weather hairs will be found, sometimes in considerable numbers, on the front mudguards of any fast-driven car. When I was first told of this I inspected a large number of cars standing in a park, and on all I found at least one hair. Anyone can test this for himself. Probably the hairs are picked up by wind suction, for they will be found adhering to

the inside edges of the mudguards as a rule. Rouse was accustomed to drive fast, and it appeared in evidence that he knocked out a dent in the front wing of his car with a mallet. This happened before he could possibly have known of hairs on the mallet, and the question of the use of mallets was first raised by the other man.

The points I have mentioned are not such as would affect the mind of a judge to any serious extent, but they probably told heavily with the jury.

The Wallace case is an instance where a man would have been hanged by the verdict of a jury had it not been for the Court of Criminal Appeal. And it must be remembered that the powers of the Court of Criminal Appeal are limited. There is no rehearing of the case.

A great weakness of the jury system is the way in which they can be, and are, influenced by the tricks and emotional appeals of advocates. Juries are affected not only by the great oratorical appeals of counsel. These have their effect mainly by providing an apparently reasoned theory which a jury can adopt to save the trouble of independent thinking. It is the nods and smiles and subtle changes of tone during examination and cross-examination which win verdicts. I remember one rather ponderous and slow-thinking counsel whose main stock-in-trade was to say in a voice apparently pregnant with deep meaning, "Ve-ry well, ve-ry well", when he had got an answer that did not suit him in cross-examination. A juryman to whom the counsel in question was new asked me after a case how it was that Mr. Blank had apparently subsequently forgotten the crushing rejoinder which had been foreshadowed by several "Ve-ry wells". He was surprised to hear that "Ve-ry well" was all there was to it.

I shall always remember a speech of the late Sir Edward Marshall Hall, made during the war. The

following is, of course, a parody, but it gives the essential spirit of it. The Judge was watching, ready to pounce like a hawk on any irregularity.

"Gentlemen of the jury, in considering your verdict you will, of course, be guided solely by the evidence which has been given. The fact that the prisoner is the father of seven little children will not weigh with you, for it is irrelevant to the question of his guilt or innocence, with which, and with which alone, you are concerned. You will not hesitate for one moment, if you are satisfied of my client's guilt, to find that verdict which will brand those seven little innocent infants as the children of a convicted felon. (Pause to sniff.) The prisoner, as you have heard, is the owner, the responsible working head, of a great factory, making shot and shell for our gallant lads in France. That will in no way influence your verdict, nor will the fact that if that verdict should be guilty—as I am well assured it will be, should you be convinced by the evidence for the prosecution—that verdict of guilty will mean that our gallant lads overseas will be deprived of those munitions of war on which the success of the Allied cause may well depend. No, gentlemen of the jury, as his Lordship will instruct you, you must and will be guided by the evidence, and by nothing but the evidence. But if, etc., etc., etc."

All this was, of course, magnificently delivered. The verdict was "Not guilty", to the obvious annoyance of the Judge, who had found no opportunity of intervening.

It would be unfortunate were juries in criminal cases to be abolished. Apart from their possible value as a protection against the oppression of the executive, juries bring the ordinary citizen in contact with the administration of the criminal law. Men and women are compelled, to some extent at least, to realise their responsibilities. But unless some means of reform can be found, juries in criminal trials will

go the same way as they have in civil cases. It is a useful exercise for any man or woman to read the evidence, speeches, and summing up in, say, three or four of the "Notable British Trials" series, and then consider whether it is possible to be at all certain that the verdict was right. When doing this the editorial comments should be ignored, and the reader should bear in mind that the jury were not able to read the evidence in comfort, re-reading at choice, but had to listen to it being slowly given and taken down during weary hours in a stuffy atmosphere. It should also be remembered that it is very unlikely that any of the jury were as intelligent and judicially minded as the reader.

Many proposals have been made for the reform of the jury system in criminal, and especially in murder cases. In particular, a number of interesting suggestions are made by Mr. Napier in the pamphlet *Murder by Jury*, to which I have before referred. Probably the most effective reforms would be:

(*a*) For the jury to answer specific questions put by the Judge, as is often done in civil cases, instead of returning a general verdict of "Guilty" or "Not guilty".

(*b*) To permit, in cases of murder, the verdict of "Not proven", as in Scotland.

(*c*) To forbid, as before suggested, the publication in the Press of reports of preliminary proceedings before the justices and at inquests.

(*d*) To empower the Court of Criminal Appeal to examine the jury as to their reasons for their findings.

There are objections to the verdict of "Not proven", but it seems preferable to the English system of allowing the jury to disagree, with much the same effect. It would not be necessary should suggestion (*a*) be adopted.

That there are comparatively few murder trials is not a reason for ignoring the possibility of miscarriages of justice. The hanging of an innocent man makes a whole nation responsible for a shocking crime. Would not Mr. Wallace have been hanged had it not been for the Court of Criminal Appeal? And have there not been others, who have been hanged, as to whom there is, to say the least, some doubt?

There are many other crimes beside murder. They are tried by juries who are undoubtedly satisfied with a lower degree of certainty than in murder cases. Owing to the incompetence of juries many guilty men escape. But many innocent men are convicted, and this is a worse evil, though the innocent who are convicted are not so numerous as the guilty who are acquitted.

CHAPTER IX

ADVOCATES

GENERALLY speaking, the worse the court, the greater the importance of advocacy. A certain County Court was for a number of years presided over by a judge whose geniality far exceeded his knowledge of the law. The result of cases heard in his court was notoriously a gamble. All the old chestnuts were told about him, including one which may be unfamiliar to some laymen.

Counsel was opening an appeal. "This case, your lordships," he said, "was heard by his honour Judge Blank, sitting at the Blank County Court."

"Yes, yes," interrupted the presiding judge, testily, "we know that. Is there any other ground of appeal?"

A friend of mine, an advocate of long experience, practised very successfully in the County Court in question. After the appointment of a new and extremely competent judge, my friend made a few appearances before him, and then gave it up and confined his activities to the police court. He told me rather bitterly that the art of advocacy would soon be lost in that County Court.

Advocacy, for present purposes, may be taken to be the art of dealing with evidence in the most favourable manner. There are great advocates whose eminence is due to their knowledge of the law and skill in expounding it. With advocacy of that kind we are not at present concerned. The importance of advocacy in criminal cases heard before a judge and

jury lies in its influence upon the jury. Except on a point of law, it has little effect upon a judge. But before magistrates advocacy is of the first importance. The justices are less capable of weighing evidence than an average jury, partly because there is no judge to see that it is properly put before them and to sum up at the end of the hearing, partly because they are as a rule much more prejudiced. In the police courts it is largely left to the advocates to see that inadmissible evidence is rejected. In some courts almost anything may be admitted as evidence against a defendant who is not legally represented. Sometimes this would be justified on the plea of saving time, in other cases because the Court is already satisfied of the guilt of the accused, and occasionally it is due to sheer ignorance.

The opening speech has far too much influence with magistrates. A skilful advocate can often create an impression in their minds that no amount of subsequent evidence will dispel. Justices seldom notice whether an opening speech is supported by the witnesses who are called. In fact, a surprisingly large number of magistrates, incredible as it may seem, think an advocate's speech is evidence. I remember appearing for the defence in a case which had been partly heard and adjourned. The solicitor for the prosecution, whom we will call Smith, was absent on the adjourned hearing, and his partner appeared instead. I made a submission that there was no case to answer, and the bench seemed favourably impressed. The Chairman, however, recollected a point, and said :

" That's all very well, but Mr. Smith said so and so. What do you say about that ? "

No witness had been called to support the opening on that particular point, so I replied that what Mr Smith said wasn't evidence.

The Chairman indignantly replied :

" I'd have you know, sir, that Mr. Smith's statement

is as much to be relied on as anything you or any other solicitor says."

He was with difficulty pacified by the Clerk, and was obviously unconvinced by my subsequent explanation. This gentleman had sat on the bench for over twenty-five years.

It is much less trouble to listen to a clear connected story than to piece together the evidence, taken by question and answer, of a number of witnesses. Police court reports in local papers usually contain little but the statements of the solicitors and counsel concerned. Advocates before the magistrates, especially those appearing for the prosecution, should be limited to making a bare statement of the facts they propose to prove, so far as opening speeches are concerned.

Knowledge of the individual peculiarities and prejudices of the magistrates is of great importance to a police court advocate. It is for this reason that it is better to engage the best local man rather than bring in any outsider, short of really eminent counsel. I have seen well-known counsel treated with absurd deference in the police courts. Generally speaking, however, people with small means will do better to spend their money on a solicitor than upon a barrister to represent them. For a similar expenditure a much more effective advocate can usually be obtained. There are several reasons for this. A barrister can be engaged only through a solicitor, so two men have to be paid instead of one when counsel is employed. The barrister, although he may have a conference with his client and sometimes with the witnesses, will get his instructions mainly from his brief, instead of directly. It is unlikely that the barrister will have had as much experience of the police courts as the solicitor. In particular, it is almost certain that he will not know the peculiarities of the individual magistrates and their clerk, nor will he know how far either side may go in

disregarding the rules of evidence and procedure, should he or his opponent be desirous of doing so. As a class, the Bar are more careful, or more scrupulous, than the lower branch of the legal profession. Lastly, counsel have not in the police court the advantage of the dignity conferred by wig and gown, a definite advantage which anyone who knows the County Court will appreciate.

It may be convenient shortly to indicate the distinction between the Bar and solicitors, which exists in England though not in the United States. Barristers who are "called to the Bar" after passing certain examinations and fulfilling various other requirements, have a right of audience before the High Court in all its branches, as well as before the inferior Courts. Solicitors have a right of audience in the police courts, the County Courts, and before the Coroner. In the High Court they can only be heard in chambers, not in open court. Except in special circumstances, such as the absence of barristers, solicitors are not given a right of audience before Quarter Sessions.

Barristers, when appearing in the High Court or County Court, wear wig and gown. Solicitors wear gowns when appearing in the County Court, and usually look remarkably like ushers. Barristers are spoken of in the courts as counsel. In court an advocate refers to his opponent, if a barrister, as his "learned friend", and if a solicitor, as his "friend". The Bar is known as the higher, and the solicitor's as the lower, branch of the legal profession.

A barrister, subject to certain exceptions, is not allowed to see lay clients except through the intervention of a solicitor. Before he appears in court he receives what is called a brief. This consists of written, usually typed, instructions as to the facts of the case, with statements of witnesses and copies of relevant documents. On the outside of the brief is written the barrister's name, and below it his fee for

the brief and "conference" expressed in guineas. These fees are generally referred to shortly as "Three and One", "Seven and Two", or as the case may be, in the conversations which take place between solicitors, common law clerks, and barristers' clerks prior to delivery of briefs. In these days the junior Bar usually break the ice by accepting a brief marked "One and Nothing" to plead guilty before the magistrates to some minor motoring offence.

From time to time the question of the fusion of the two branches of the legal profession is discussed. For practical purposes fusion would not make much alteration for the distinction corresponds to a real difference in function.

From the business point of view the position of an advocate is often difficult. Two things have to be considered: winning the case and satisfying the client. It is often necessary for a police court advocate to make up his mind which he will attempt. He may know that to call a certain witness, or to cross-examine on certain lines, is risky and may lose the case. But as a rule the client will be just as well pleased at a loss incurred through following instructions as with a win obtained through ignoring them. While if the decision is adverse after the advocate has failed to inquire what Mr. Gladstone said in 1864, an angry client has to be faced. This accounts for a good deal of what appears mere foolishness in the inferior courts.

Clever advocacy is, however, to be found in the police courts. A busy advocate before the magistrates takes part in an immense number of cases, a number far greater than an eminent barrister such as Sir Edward Marshall Hall or Sir Henry Curtis Bennett deals with. I am not comparing ability but experience. The more important qualities needed by an advocate in criminal cases are similar to those necessary to an actor. He must be able to persuade himself

of the truth of his part, he must know his audience, and have a good memory. Unless an advocate can convince himself, he will not as a rule convince any one else. No one who has read the life of Sir Edward Marshall Hall can doubt his faculty for believing the stories he put forward with such conviction. No one who saw him in court could fail to realise what a great actor he was.

Police court advocacy does not, on the whole, offer much attraction to men of considerable ability. Success is obtained by cunning and trickery rather than by clear thinking and knowledge of the law. There is not much money to be made out of criminal work, except in London and a few large cities. The average police court advocate has a general knowledge, beaten into him by experience, of the technical points useful in practice, and he is usually a shrewd judge of the effect a witness is likely to produce. But, whatever his natural ability, he suits his arguments to his audience. No one without actually having heard what goes on in police courts would think it possible that magistrates could be found to swallow the things they do. The false standards thus produced make the position of the innocent, but undefended, man even more difficult than in the nature of things it must be in any court.

To sum up, advocacy can do more in a bad court than a good one, because a good court is moved solely by the evidence, and judges that for itself, while a bad court can be influenced in many other ways. Further, a bad court often indulges in bullying, which, even where not prevented by the presence of an advocate, is usually diverted to him. A great deal of bullying goes on in some police courts, but occasionally a magistrate meets more than his match. I remember one such occasion in a country court. A man was brought up charged with housebreaking. Owing to some small interruption occupying the bench a

superintendent of police told the prisoner to sit down, which he did. The Chairman noticed this, and in an overbearing tone ordered the accused to stand up and show respect to the Court. A cold sardonic drawl came from the dock: "Will you make up your bloody mind what you *do* want? I've just been told to sit down."

The magistrate, a notorious bully, was taken aback, and replied that he had not heard what was said. Again the voice replied: "If you can't hear what's said you're not bloody well fit to sit there. Come and stand by me and I'll shout in your adjectival ear."

This man was an old convict and was playing for a remand. Without, of course, approving of insolence to the bench, I remembered numerous instances in which the same Chairman had bullied undefended men and women, and rejoiced.

Prosecutions, except in trivial cases where a dispute is unlikely, should never be conducted by police officers. High Court Judges have repeatedly expressed their disapproval of police advocacy. But the methods of prosecuting solicitors are often undesirable. The objections to one solicitor becoming identified with the police and to payments by results have been referred to before. It should be obvious that any appearance of vindictiveness, or pressing unduly for a conviction, is as much out of place in the police courts as at Assizes or Sessions. It would be an advantage if prosecutions were all conducted by the Bar. The only objection to this is that counsel, as a class, are very credulous. They are constantly forced to realise that many things are morally certain but cannot be proved by legally admissible evidence. They soon come to attach little importance to evidence, out of court, and believe all sorts of gossip. I have several times been told by counsel, after the hearing of a case, of things that were said to be known but which could not be proved about an accused

person. Often these stories were quite false. Counsel thus sometimes persuade themselves of a prisoner's guilt, although on the evidence there is some doubt, and press for a conviction as they would not otherwise do. From what I have heard this probably happened in one very well-known case. Solicitors, who come more in contact with persons and less with paper than the higher branch, are less credulous.

A thing which is sometimes unfair to the accused is the way in which the question of whether or not evidence is admissible is settled. When there is a jury they are often ordered to retire while the matter is argued. The inevitable result, whether the evidence is admitted or not, is that the jury think the defence have tried to shut out something which might tell in favour of the prosecution. Success may be worse for the accused than failure, for the jury usually imagine that some damning fact has been withheld from them by reason of a technical quibble. If there is the smallest doubt in the mind of the prosecuting counsel as to the admissibility of evidence the question should be settled before the Judge in private, without the jury knowing that any point has arisen. Magistrates are even worse than juries with regard to the rejection of evidence. In addition, they usually have to know what the evidence actually is before it is disallowed. Magistrates being what they are, it is impossible for them to disregard what they have heard. Most advocates have at times allowed inadmissible evidence to be given without objection rather than that the justices should suppose anything was being kept from them by means of a technicality. I have often done so myself.

The police court solicitor is more often concerned with the defence than with the prosecution. The increase in the remuneration of police court advocacy, caused by the growth of licensing and motoring work and the number of betting prosecutions, has intro-

duced rather a better class of man than practised in the past. But in the main the work is done on the old lines. Dicken's account, in *Great Expectations*, of Mr. Jaggers, the police court solicitor, and of Wemmick his clerk, shows how little change there has been in well over seventy years. All over the country police court work appears to be very similar, though there is variation in detail.

As a rule the prospective client who enters the solicitor's office knows at least something of what to expect. If he or she has not been there before, a more experienced friend usually accompanies, or else the police have given an introduction. But however this may be, the first greeting is the old question, " How much can you find ? " Sometimes it is wrapped up a little, but it comes to the same thing. Police court fees are paid in advance, a rule which has no exception in ordinary criminal or quasi-criminal cases, though motoring cases where instructions are received from an insurance company or a regular client are in a different category. The amount of the fee varies very widely, according to both the eminence of the advocate and the ability of the client—or his friends and relatives—to pay, but it is never less than a guinea. Quite a number of cases are taken free of charge, but it is considered bad form among advocates to let this be known. Selfish fears of being flooded by " deserving cases " also tend to concealment of such generosity. The Poor Prisoners' Defence Act is seldom applied in Courts of Summary Jurisdiction.

The necessary fee extracted, usually by a clerk, very much in the manner of Mr. Wemmick in *Great Expectations*, the preparation for court begins. Often the alleged offender brings in his summons, or sends down from the cells, on the morning of the hearing, and in such cases all that is possible is to get a general idea of the facts and shape the defence according to the evidence for the prosecution, looking carefully into

the advocate's Bible, *Stone's Justices Manual*, for any technical objections that may turn out to be available. It is seldom that an adjournment is applied for, except in serious cases, and it is astonishing what a plausible defence an experienced advocate will put up after a good look at the summons and a hasty conference in a court corridor, for there is a wonderful sameness about police court cases.

Should there be sufficient time, and money, for the defence to be fully prepared, the procedure is different. Usually an experienced clerk first interviews the accused, and begins by getting his version of the facts. As a rule this is best got by letting the man tell his own story, and only interposing a question now and then to clear up doubtful points. Although much time can be saved by making the teller keep to the point, it is a dangerous policy to prevent a man from telling everything, relevant or not. Unless an advocate knows all the circumstances of a case, all "about" it in the literal sense, he is often afraid to cross-examine freely for fear of what he may bring out. It is a common trick on the part of the police for the first witness to keep back some damaging point of his statement in the hope that a rash advocate for the defence may elicit it in cross-examination, when its effect is much more damaging. Should the advocate be too wary to do so, a second witness will disclose it. For example, the other day I heard a police officer give evidence that a man charged with driving a car when under the influence of drink smelt of beer. A glass or two of beer was admitted.

"You say he smelt of beer," said the defending advocate, cross-examining; "are you sure it wasn't whisky?"

"It might have been," was the reply.

"Why do you say it might have been?" rashly inquired the advocate.

"Because a half-empty bottle of whisky was found

in his pocket," was the answer, given with apparent reluctance.

This sounds absurd, but it is much easier for an advocate, sparring for time and looking for an opening, to fall into such trap than an outsider would think. In the particular instance the fault lay a good deal in the bad staff work of the clerk who had made a note of the facts.

In respectable offices it is not considered legitimate to suggest a story to the accused. Readers of *Great Expectations* will remember the indignation of Mr. Jaggers with a client who had brought a witness:

"What is he prepared to swear?"

"Well, Mas'r Jaggers," said Mike, wiping his nose on his fur cap this time, "in a general way, anything."

Mr. Jaggers suddenly became most irate.

"Now I warned you before," said he, throwing his forefinger at the terrified client, "that if you presumed to talk in that way here, I'd make an example of you. You infernal scoundrel! How dare you tell *me* that?"

There are, however, few common law clerks who are reluctant to point out that the version given them is unlikely to be believed, and that the facts may more probably, or more plausibly, be said to have happened otherwise. This is not necessarily improper, for one of the strangest features of police court cases is the way in which men who are perfectly innocent of the crime of which they are accused will sometimes lie like troopers about their movements, either for some reason quite irrelevant to the case itself, or simply because they are frightened. The following instance, which happened a few weeks ago, may serve as an example. There had been a betting raid on a licensed house. On searching one of the accused the only thing in any way incriminating found on him was half the cover of a packet of Woodbines with the name of a

horse on it. The horse was not running that day, nor was there any note of money on it to indicate that it was a betting slip. The paper was found in an inside breast pocket. He had made a statement to a clerk that he had picked up the piece of paper from the pavement just before coming into the public-house and did not know what was on it! I told him that if he wanted to lie he had better think of a more likely one. He then said that he had actually been given the paper with the name of the horse as a tip by a fellow-workman the same morning. I ascertained that this was the truth, but he had been afraid to give it for fear of conviction. I have met with this kind of thing time after time. In police court cases it is usually due to lack of confidence in the bench. Lying of a somewhat similar kind occurs in more serious cases. It has been suggested that it happened in the Crippen and Rouse trials.

When the facts have been, as far as possible, ascertained, the question of proving the defence is gone into, always bearing in mind the rule that every witness is a potential source of danger. In all but the most important cases police court advocates tend in these days to rely upon the cross-examination of the witnesses for the prosecution and the evidence of the accused himself. This has three great advantages. It shortens the case, it gives the defending advocate the last word, and, of even greater importance, it enables him to speak freely, without any fear that the evidence he calls may contradict his opening.

When the witnesses have been interviewed, and a note made of their evidence, the advocate himself often holds a sort of dress rehearsal, in which he himself cross-examines the accused and his witnesses as severely as possible, and patches up any deficiencies that may be revealed to such an extent as his conscience permits. At this rehearsal everyone is present, so that all may tell the same story at the court. It may

be taken, generally speaking, that it is useless to try substantially to alter a witness's story from the truth, however improbable or damaging it may sound, even should one think it permissible to do so. An inaccurate version may be brought in accordance with the facts, or an equally inaccurate, but more plausible, story substituted. Yet however much the truth may be tampered with in rehearsal it will almost invariably be volunteered in the box, even without cross-examination by the other side. I am speaking now of the ordinary type of witness. There are, of course, a good many witnesses who are prepared to enter into a criminal conspiracy to defeat the ends of justice.

After the rehearsal it only remains to ascertain from the police what, if any, previous convictions there are against the accused. A man is seldom truthful as to this, and when he admits previous convictions he scarcely ever discloses all. Incidentally, it is a mistake commonly made by magistrates to suppose that the subsequent proof of previous convictions for similar offences shows them to have been right in convicting in a doubtful case. It is quite probable that the previous convictions were the reason the charge was brought. In the majority of cases the police first decide who is the criminal and then find the legal evidence against him. I hasten to add that this does not in itself involve any reflection on the police.

Perjury is very rife in the police courts, and has few risks. Now and then there is a prosecution, but the inadequacy of the notes taken in most cases, and the way in which trials are hurried through, makes perjury reasonably safe. So far as the High Court is concerned, Mr. Justice McCardie, who has great experience of trials in which witnesses give evidence, says perjury is very common. Mr. Justice Eve, of the Chancery Division, where evidence is mainly documentary, says it is rare. The Recorder at the Old

Bailey, on the 29th April, 1932, said it is rampant. The Judicial Proceedings (Regulation of Reports) Act of 1926, which has prevented the full reporting of matrimonial cases and those involving indecency, has increased the amount of perjury before the magistrates. There appears to be some doubt whether the Act applies to matrimonial cases in the police courts, but it is generally assumed that it does. Publicity has, in the past, greatly added to the risk that perjury would be detected. Prosecutions for perjury are usually against witnesses for the defence. Adverse comment on this is unfair, for, however low a view may be taken of the police, no one has yet suggested that the balance of criminality is not to be found among the accused. In addition, to proceed for perjury against witnesses for the prosecution is unfair to the defendant except in the clearest cases, for such proceedings usually amount to a retrial of the case with the onus shifted to the other side. There is an exaggerated idea among laymen as to what can be done by cross-examination. However skilful an advocate may be, he runs the risk that his cross-examination, if unsuccessful, may greatly increase the effect of a witness's evidence. No advocate can make bricks without straw, and stories of brilliantly successful shots at a venture in cross-examination have little relation to actual practice. A usual type of perjury, and one difficult to expose, is where a story is told true in every respect but one. The false point is, of course, of the utmost importance. For instance, the tale may be true, but of a different man; or the facts may actually have occurred, but at a different time.

The rule of conduct laid down by the General Council of the Bar has been mentioned before but is worth quoting again:

"A barrister should, while acting with all due courtesy to the tribunal before whom he is appearing, fearlessly uphold the interests of his client without

regard to any unpleasant consequences either to himself or to any other person."

A similar course should be followed by solicitors when acting as advocates, but owing to the fact that police court solicitors usually practise in a very limited number of courts, and that it is of great importance to them to be supposed to have "the ear of the court", they do not always act up to this tradition. It is difficult to combine doing one's duty to one's client and pleasing the average bench. To speak from personal experience, I have in the past received more than one intimation that certain members of a bench disliked too strenuous a defence. This was not a question of discourtesy or wasting time. It was put quite plainly by one magistrate, since deceased, who said that if a man were guilty he ought to be convicted, and no advocate ought to put up such a defence as to prevent this from happening. This was, of course, an extreme instance, but any advocate who defended strikers charged with any offence during, or soon after, the General Strike, knew that he risked losing the "ear of the court" for a considerable time. I was told a few months ago by a police inspector that the fact of a certain solicitor having defended in "strike cases" is remembered by a country bench against the advocate in question. Probably he was giving me a hint. My common law clerk was told the other day by another inspector after a successful defence that he and I were making a lot of enemies. This was not true of the police, for with the rarest exceptions they never bear malice.

The late Mr. Edward Marjoribanks, in his *Life of Sir Edward Marshall Hall*, tells how that great advocate's practice diminished through his quarrels with judges. It may have been so, but it must be remembered that his reputation was made in the first place by his readiness to stand up for his client. He certainly carried this quality to excess at times. I

remember on one occasion a certain judge made a harmless enough joke, which raised the usual ready laugh. Marshall Hall turned to the jury, and said in a tone of icy contempt:

"I hope, gentlemen, you appreciate this specimen of his Lordship's wit."

The defence of ordinary criminals is not the most remunerative part of a police court solicitor's practice as an advocate. Licensing work comes easily first, and in this "the ear of the court" is of great importance. Motoring, betting, affiliation, and matrimonial cases are all more profitable as a rule than defending persons accused of larceny and similar offences.

In the police court the chances of acquittal are often doubled or halved, according to the ability of the solicitor engaged for the defence. Even allowing for the peculiarities of juries, the difference between employing the best and the worst advocates at Assizes or the Old Bailey is nothing like so great, although a bad advocate is sometimes worse than none at Assizes. It is possible that there are some who do not know the story of the old lag, who was asked by the Judge whether he would not like counsel to defend him. The prisoner glanced round at the junior Bar and said apologetically:

"If it's all the same to your Lordship, I'd sooner 'ave a couple o' good witnesses."

In the police court any kind of advocate is a great help to the accused. He is to some extent protected by the fact that at least one person of some standing will know what has been done.

Money talks. It is sometimes pitiful to see the efforts that are made to scrape together sufficient money for a police court case to be defended. The working-classes know what chance an undefended man or woman has.

CHAPTER X

CRIME AND PUNISHMENT

THE theory of crime and punishment has been fully dealt with by various philosophers and in many text-books. I am concerned here only with certain practical aspects of the question. So far as intelligent people are concerned the vindictive theory of punishment has been abandoned. Punishment is now supposed to be deterrent and remedial. But among magistrates, and even by some Recorders, the vindictive theory is largely acted upon.

There are some men and women who are definitely bad. They have an evil kink which turns them towards complete selfishness and cruelty. Some of them come within reach of the criminal law, and some do not. Charles Peace was such a man. There is another well-known example in Broadmoor Asylum. And there are many others in prison and at large, some of them of good standing and with no convictions against them. These persons are not necessarily law breakers. The evil in them shows itself in various ways. The essential thing that distinguishes them is that they are bad through and through, with no good in them at all. They should, in my opinion, be killed off without mercy, whether men or women. They are rare, but usually unmistakable, though they are often sexually attractive.

There is another class of criminal who should either be painlessly destroyed or, preferably, sterilised and confined in colonies, not necessarily under penal conditions, but permanently. This class comprises

a large number of men and women who are below the average in ability and are devoid of kindliness and sympathy. The following definition of Moral Defectives in the Mental Deficiency Acts apparently applies to a number of people, but in many cases only apparently.

"Moral defectives, that is to say persons in whose case there exists mental defectiveness coupled with strong vicious or criminal propensities, and who require care, supervision, and control for the protection of others."

The difficulty of applying this definition in practice is that mental defectiveness, to quote the Acts again, "means a condition of arrested or incomplete development of mind existing before the age of eighteen years", and the earlier history is frequently wanting.

It is from this class that the offenders against girls and children usually come. They are responsible, too, for a large amount of petty theft, for they are incapable of earning a living in the open market. Usually they sponge on relatives, beg when they can, and steal on a small scale. They are worse than useless to the community. It is hard to know how to deal with them. The Mental Deficiency Acts were intended to meet the difficulty, but, apart from the point already mentioned as to early history, proper machinery for the administration of the Acts is lacking. The doctors and magistrates who certify under the Acts are far too often deficient in knowledge and experience. It frequently happens that nearly all the certifying in a district is done by a very few magistrates and doctors who are notoriously willing to certify any one. In one town a certain magistrate well over seventy years of age has probably signed more certificates in the last two years than all his colleagues put together. And in most places for a person whose income is below the taxable level to express views on certain subjects similar to those of Messrs. Bertrand Russell, G. B.

Shaw, H. G. Wells, or Aldous Huxley is to be certifiable beyond a doubt.

The question of asylums, or mental hospitals, if the name is preferred, is one which needs attention. I have no special knowledge of any except Broadmoor, but, from what I have heard from clients who could have no possible motive for misleading me, there can be little doubt that patients are often ill-treated. Occasionally a case comes into court, but I fear these are not exceptional. The attendants are not altogether to blame. Most of these places are understaffed, and little care is taken to get suitable persons as attendants. Usually there appears to be insufficient supervision. From what I have seen it is a good deal too easy to get a person placed in an asylum, but strictly speaking asylums, other than those for criminal lunatics, have little to do with our system of justice.

The great Criminal Lunatic Asylum at Broadmoor I know as well as any one who has neither been confined there nor served on the staff can do. For about twenty years I frequently visited a client at Broadmoor, and sometimes lodged at the houses of attendants. Without making any improper revelations, I may say that the improvement effected in twenty years was immense. From the atmosphere of a convict prison the place was converted to that of a convalescent home. When I first visited Broadmoor the constant complaint of my client was that the authorities could not make up their minds as to whether he was a convict or a patient. He had, however, nothing but praise for the late Sir Arthur Sullivan, to whom the change was largely due.

The English law with regard to insanity as a defence is generally regarded by doctors and psychologists as obsolete in the light of modern knowledge. In the United States of America and the British Dominions the law is considerably more advanced. The onus of proving insanity is on the defence, as persons are

presumed to be legally sane until the contrary is proved. Apart from the obsolete nature of the law, which still follows the rules laid down by the judges after Macnaughton's Case in 1848, a source of injustice is that the prisoner himself often has no choice as to the defence being raised, and no opportunity of rebutting the evidence of insanity. I have personal knowledge of one case in which a man's family caused the defence to be put forward, with the result that a man who would in the ordinary course have been sentenced to five years' penal servitude or thereabouts, spent nearly thirty years at Broadmoor and ultimately died there. Actually he was, at the time of the crime, suffering from the after-effects of delirium tremens.

Next comes a large class, comprising in my view the great majority of criminals, whose criminality depends almost entirely upon their environment. A certain proportion of these are persistent professional criminals, who take to crime because it is for them the easiest way of making a living. I have known some of these men fairly well. Apart from their law-breaking they are no better and no worse than the rest of us. In dealing with the defence of such men one soon gets to know a good deal about them, and there is a lot to be learned from their wives and friends. They stick to one type of crime because they know how to dispose of the proceeds in that particular line. There are many little things by which a man can be judged. The things he says about others, his consideration for his family, whether he is willing to take his share of any risk, even, possibly I should say above all, the extent to which he keeps his word about costs, give a line as to a prisoner's character which is much more reliable than his previous convictions. I do not say the professional criminal is a good or a decent man. But he is little or no worse than the average non-criminal. In addition to the professional criminals there are the casuals, who drift into crime

through unemployment. The present is not a fair time to judge, for many good workmen are unemployed, but broadly speaking the cause of crime is laziness, and this in turn is largely due to environment, including education and upbringing at home. The trouble with modern elementary education, in my opinion, is that there is too much, not too little, discipline. Children are simply pushed along, without any individual effort of their own.

Among this class of occasional criminals there are a number who have been unjustly convicted, and these make some of the most dangerous of the Revolutionary Communists. This is not mere theorising. I know personally several of these men. One in particular I saw unjustly convicted a few weeks ago. The middle-class picture of the "paid agitator" is all wrong. Many of these men must be paid. Otherwise they could not live. But they have a bitter and genuine grudge against society which gives them driving power. There are, however, professional agitators who will take money from any side. In the course of defending a man for obtaining money by false pretences I got some amusing particulars of the financing of a "Communist" candidate by a Conservative. This particular Communist, when I last heard of him, was spouting in Hyde Park for one of the Anti-Prohibition societies. Mainly, however, these men have a permanent grudge against society. It is important that the possibility of miscarriages of justice should as far as possible be eliminated, even from a purely selfish point of view. These victims of injustice have the persistence that a grievance nearly always gives, and lack of confidence in the administration of justice provides them with fertile ground for revolutionary agitation.

Punishment is necessary, if only as a deterrent, but there should be some pretence of a standard about it. Even a judge who has maintained a rigidly judicial

attitude during the trial of a prisoner will let himself be governed by emotional and personal reasons when dealing out punishment. Theoretically a crime concerns the community rather than the individual. A case tried at the Old Bailey, reported in the *Daily Telegraph* of 3rd March, 1932, shows the kind of thing that happens in practice. A man was charged with bigamy and pleaded guilty. The woman with whom he had gone through a bigamous ceremony said that she did not know the man was married, but asked for him to be let off. The Recorder said she had behaved splendidly, and that he would see what he could do for the man.

When, however, the prisoner was asked whether he had anything to say, he incidentally stated that the woman did know he was a married man before the ceremony.

The Recorder became very indignant, and told the prisoner he had intended to let him go without punishment, but now that he had failed to express sorrow for the wrong he had done to the woman, and because he had lied in the witness box, he would go to prison for six months.

The man fainted on hearing the sentence, and later on a detective came forward and said that the woman had told him she did know that the man had a wife when she married him.

The Recorder once more changed his mind, and cancelled the sentence.

In another case, reported in the *Daily Telegraph* for 14th May, 1932, a Metropolitan Police magistrate fined a man 15s. on each of two charges of drunkenness, and said he would not deal separately with a charge of wilful damage. Then a Detective-Sergeant said that there had been many complaints against the man of bilking cabmen, and that he owed a lot of money. The magistrate, although the other charges were not, of course, before him, and in fact had not even been

made, revised his decision and passed a sentence of twenty-eight days' imprisonment.

Even if there had actually been previous convictions for obtaining money by false pretences, or for "bilking" cabmen, it is hard to see why this should imply a more severe sentence for drunkenness. The Lord Chief Justice, sitting as President of the Court of Criminal Appeal, said on 8th February, 1932, in dealing with an appeal:

"The sentence of four years' penal servitude was evidently based upon the view that when a man has previously been convicted a subsequent sentence must of necessity be a heavier sentence, whatever the nature of the offence may be. We have said again and again, and I repeat it, that a man is not to be punished twice for the same offence, and it does not in the least follow that a subsequent sentence must be heavier than the sentence he previously had."

Few magistrates, however, agree with the Lord Chief Justice.

It is not severity of punishment but certainty of conviction that has a deterrent effect on prospective criminals. Some criminals are men of great ingenuity and weigh their chances very carefully. I remember one man, a confirmed criminal, whom I defended before the committing justices on a charge of breaking and entering, and larceny. He adopted an ingenious plan. There was a certain detective-sergeant with whom he had come in contact on previous occasions. The man, whom we will call Smith, went to the detective and asked for his help, saying he was being tempted to return to a life of crime. Smith was a notorious liar, and naturally enough the officer told him to clear out and not waste his time. Smith earnestly renewed his entreaties, saying that a man had come to him with a plan for breaking into a certain shop, and that at 11.30 p.m. on the following day they were to get into this shop through a skylight

in the roof. The detective laughed at what he supposed to be a cock-and-bull story. Smith urgently begged to be believed, and asked the officer to hide near the skylight with another man at 11.30 p.m. on the following night, so that he might be saved from a life of crime. He was angrily told to clear out.

At 11.30 p.m. the following night, exactly as arranged, Smith and another man broke in through the skylight he had indicated and got away with over £300 worth of stuff. Smith, of course, relied on being disbelieved, but even had the police kept watch he would have been fairly safe after his warning, whatever might have happened to his unfortunate friend.

Smith was caught through a receiver, and I represented him before the magistrates. The evidence was somewhat thin, but sufficient for a committal. Smith was refused bail, and I advised him to tell the tale for himself at Quarter Sessions, and make the most of his two months in prison awaiting trial. He surpassed himself before the Recorder, and almost reduced that gentleman to tears. Calling the detective-sergeant before him, the Recorder sternly admonished him for his failure to help a repentant criminal. The unfortunate officer tried to explain, but was sternly told he had better say nothing. Smith was then sentenced to one day's imprisonment, and, I expect, did very well out of his raid after all, for only about £70 worth out of over £300 value was recovered. Smith, by the way, is at present doing five years' penal servitude.

It is, I think, a mistake to suppose that the real professional criminal, of whom there are few, does not make a good living. It must be remembered that they positively like the life, and that most of their time is spent in the idleness they so much enjoy. Most of those I have known have been men of great vanity, very proud of what they considered their superiority in brains over the police.

There are, I fear, a very much larger number of sexual offences against women and children than is known. For various reasons, most of them are not reported. The only redeeming feature of the position is that the offenders are comparatively few, though the offences are numerous. Whether there is an increase or decrease of this kind of crime it is hard to say. It is obvious that magistrates are not fit to try cases of this sort, but then, unfortunately, there are not too many judges who can be trusted when any question involving sexual irregularity comes up for trial. They show ridiculous indignation with regard to offences which are obviously matters for the doctor and the psychologist. There is in all classes of crime a difference between the attitude of different judges towards similar offences, but in no class is the difference anything like so great as in offences involving sex in any form. The nearest approach is in the case of blackmail, against which, though a mean and cowardly crime, a quite absurd amount of indignation has been expended. Let the reader ask himself or herself whether he or she could be blackmailed.

The recent report of the Committee on Persistent Offenders is of interest, and its recommendations, both with regard to reformative sentences for young offenders and long preventive terms of imprisonment for persistent criminals, are theoretically sound. The existing definition of "habitual criminal" has in practice proved as unworkable as that of "habitual drunkard". The practical difficulty is as to the cost of working the reformative training. It is only men and women of exceptional gifts who can usefully handle potential criminals. Youths and young men of this class cannot be dealt with *en masse*, but only as individuals, and the expense of getting and keeping a sufficient number of suitable men will be very considerable.

The preventive detention of the persistent criminal

is an easier problem, and if properly worked would very largely diminish crime in this country. It would not, of course, affect crimes such as murder at all, but it would greatly lighten the work of the police.

CHAPTER XI

IMPRISONMENT FOR DEBT

IMPRISONMENT for debt, as everybody knows, has been abolished, so that it is not altogether unnecessary to explain how it is that in 1929, the last year for which statistics are, at the time of writing, available, 12,860 persons were committed to prison, not for any crime, but because they had not paid money due from them. Of these, 3381 were committed by the County Courts, 6879 by the magistrates under Wife Maintenance or Affiliation orders, 2002 by the magistrates for non-payment of Rates, and 84 were Income Tax defaulters. For the moment I ignore the 11,579 men and women who were imprisoned in default of payment of fines.

Until 1869 a creditor could have his debtor committed to prison until the debt was paid. Very many thousands of people were so committed, and numbers of them remained in prison all their lives. This was an ancient remedy, and Dame Quickly intended to exercise it against Sir John Falstaff. Details will be found in *Henry IV*, Part II, Act 2, Scene 1. Dame Quickly asks Fang if he has entered the action, and Fang and his man wait for Sir John and attempt to arrest him in process of execution for debt. The Lord Chief Justice enters during the struggle and asks what is going on. Dame Quickly answers: "O my most worshipful lord, an't please your grace, I am a poor widow of Eastcheap, and he is arrested at my suit."

Dickens, who was thoroughly familiar with most of the abuses of the law, and who did more to bring

public opinion to bear on them than any man before or since, deals fully with imprisonment for debt. Many people will remember the scene when the Sheriff's officer comes for Mr. Pickwick, saying, "I've got an execution against you, at the suit of Bardell—here's the warrant—Common Pleas."

And Sam Weller nearly started the very same kind of row that began when Fang and his man arrested Falstaff at the suit of another widow. But in the end Mr. Pickwick went off peaceably to prison.

Since the Debtors Act was passed in 1869, however, no person can be arrested or imprisoned for debt, except under certain circumstances. One of these exceptions relates to committal orders on non-payment of Judgment debts. This power is exercised by the High Court and the County Court, and the limit of time for which a debtor can be committed to prison in default of payment under an order is six weeks for the same default. As, however, an order is almost always for payment by instalments, and a debtor may be imprisoned on default in respect of each instalment, the six weeks' limit may be very considerably exceeded.

What usually happens now is this. A creditor, having obtained judgment, generally for payment by instalments, applies to the Court for an order committing the debtor to prison in default of his paying the amount due. Usually the order asked for, and on appropriate evidence made, is for committal of the debtor suspended so long as instalments at a specified rate are paid.

The law provides that a committal order is not to be made unless it is proved to the satisfaction of the Judge that the debtor has, or has had since the judgment, the means to pay and has refused or neglected to do so. Where the trouble arises is with regard to the evidence of means. The standard of evidence required before a committal order is made varies widely in different

courts. Practically all the committal orders are made by the County Court Judges, and most judges are careful as to there being evidence of sufficient means, although, naturally enough, their ideas as to sufficiency vary. But the evidence itself is far too often unreliable. In the great majority of cases it is given by a professional debt-collector, and often the debtor does not appear, so that the evidence is quite unchecked. Frequently a man combines the trades of debt-collector and what is called a "Scotch Draper", i.e. one who sells goods, usually drapery or clothing, on the instalment system and himself collects the payments. Such a man often buys up large quantities of debts at a heavy discount, and collects them himself with the aid of judgment summonses.

Judges usually ignore the provision as to a debtor having had the means to pay, except in bad cases, and insist on evidence of present means. Notwithstanding this, 3381 debtors actually went to prison in 1929 under committal orders of the County Courts, 3448 in 1928, and 2875 in 1927. This, however, does not represent the extent of the evil. It constantly happens that men are saved from going to prison by the help provided by relatives, friends and neighbours, or by borrowing without hope of repayment. Sometimes it is even worse. Not long ago I defended a man charged with obtaining money by false pretences. He was, and had been for years, suffering from advanced valvular disease of the heart. He was quite unable to work, and had for several years been in receipt of parish relief. Notwithstanding this, he was paying under two committal orders made by the County Court. He had consented to both orders, which had been made in his absence, and obviously without the actual facts having been disclosed to the Judge. One of the most unfortunate things about statistics is that people so seldom know the full facts behind them. Only a small percentage of those against

whom committal orders are made go to gaol. The necessary money is found somehow. This was once pointed out to me by a County Court Judge. But it does not prove that the committal orders were justified, for the money is not as a rule found by the debtor.

It is often argued that if committal orders were abolished the poor would be unable to obtain credit. In the first place credit is not, as a rule, an advantage to a man earning a weekly wage. Many a man has gone to prison, or struggled for years to pay under a committal order, because he or his wife has signed a contract for some useless article on the instalment system. I have seen the unfortunate position of the miner's or labourer's wife who has got into debt with the local grocer or draper or butcher. She dare not deal with any other shop, and has to pay the highest prices for everything. I have lived in a mining village and in an agricultural one, and I have acted for tradesmen as well as for their customers. Often enough a judgment is obtained without a man hearing anything about it. An ordinary summons does not have to be personally served, the wife goes to the court and consents to judgment, and the first thing the husband knows about it is when he is served with a judgment summons. I doubt whether the abolition of judgment summonses and committal orders would make any difference whatever to the desirable kind of credit. Mr. Claud Mullins apparently thinks otherwise. In an article in *The Justice of the Peace* for 16th April, 1932, he says:

"Those who lightly urge the abolition of all 'imprisonment for debt', and they are many, do not face the inevitable consequences. Human nature being what it is, the consequences might well be the wholesale evasion of obligations to the serious detriment of innocent people, and the bringing into contempt of our whole system of justice."

It is difficult to know what Mr. Mullins thinks "the inevitable consequences" would be. Scotland has faced them, without any disastrous results, and the Scottish example is also sufficient to meet his suggestion as to what the consequences "might" be.

There is not much wrong with the law in theory. If a man can pay his debts and will not do so, punishment is appropriate. But it does not work in practice. The ordinary shiftless working-class woman cannot make her husband's wages go as far as, if she were the capable woman she is not, she might be able to do, and as a result her husband sometimes goes to prison. The punishment falls, to a considerable extent, upon her and her children. The clever rogue, who knows the ropes, is seldom committed. Mr. Justice McKinnon, speaking on 24th February, 1932, is reported to have said that he could not help feeling there was something disquietingly wrong with the system.

A worse feature of our system of imprisonment for debt is the number of men committed to prison for failure to comply with Wife Maintenance and Affiliation orders made by the magistrates. It is worse for several reasons. While the numbers committed by County Court Judges are decreasing, those sent by the justices are on the increase. In 1913 the number committed by the County Courts was 5759, and in 1929 it was 3381. The comparable figures for the Courts of Summary Jurisdiction were 3554 in 1913 and 6879 in 1929. These figures of magisterial committals are for Maintenance and Affiliation orders alone.

We have seen on what flimsy evidence separation orders are granted. Any sort, or no sort, of evidence of means is sufficient for magistrates to make an order against a husband for payment of maintenance. The following was quoted in the *Week-end Review* this year from a local newspaper. I have taken the trouble to verify the quotation, but omit the names:

"When R.S., 31 Littleton Street, was summoned by his wife, E.S., of 74 Upper Green Lane, for desertion, he said he had no work, no money, and did not get unemployment pay.

'Then how do you live?' questioned the Clerk.

Defendant: 'I am not living, I am existing.'

An order of 10s. per week was made, Alderman T. advising S. to get to work and earn the money."

That is the kind of thing that happens. I have seen and heard it scores of times. The Chairman or the Clerk, in response to a man's plea that he cannot pay the amount ordered, usually tells him that somebody has got to keep his wife and children. For practical purposes the magistrates can do just as they please in fixing the amount of maintenance orders. It is true that the High Court has said that justices ought to follow the practice of the Divorce Court and give the wife a third of the joint income. But this was not a direction binding upon the justices. The Report of the Brixton Prison Discharged Prisoners Aid Society for 1931 states that many men are ordered to pay amounts which are impossible even when they are in full work. A large number, probably a majority of defendants, do not know that it is possible to make an application to vary the order when their earnings diminish. Even when they are aware of this possibility they may find it unavailable. Many courts refuse to allow an application for variation to be made until all arrears are paid up, and the High Court have held this course to be legal. The result of course is that a man gets more and more hopelessly in arrear.

Once in arrear his position is hopeless, for the magistrates can commit him to prison without any evidence that he has, or has had, the means to pay. It is sometimes alleged that the justices are accustomed in practice to inquire about the defendant's means before committing him. The following are

examples, out of very many cases, of the kind of inquiry that takes place:

On 27th January, 1932, I was in court when a husband was brought up in respect of £50 maintenance arrears on an order of £1 a week. He was getting 15s. 3d. a week unemployment pay and had no other income. Asked why he had not drawn anything for his wife, he replied that he could not as she was at work. He was committed to prison for two months. No other evidence was given.

In another case this year a man owed £10 6s. arrears. He was getting 15s. 2d. a week parish relief. He was committed for twenty-eight days, suspended so long as he paid 15s. a week.

These were not exceptional cases. The decisions were more obviously wrong and silly than usual, but men are constantly sent to prison for not carrying out orders for practical purposes just as impossible.

The official attitude in this, as in other cases where reform of the Magistrates' Courts is obviously necessary, is that nothing need be done. On 24th February, 1932, the Home Secretary was asked by Capt. Watt whether he was aware that orders for committal to prison can be made in the Courts of Summary Jurisdiction for non-payment of Maintenance arrears without proof of means, and whether he would introduce legislation to bring the practice in these courts into line with the procedure in County Courts where no committal to prison for debt can be made except on proof of means.

Sir Herbert Samuel replied—and one could almost hear Mr. Clynes speaking, though both right honourable gentlemen have doubtless been mere mouthpieces for the same permanent official:

"Though proof of means is not in law required before a commitment order can be made for non-payment of arrears under an order to maintain a wife, justices are accustomed to take into consideration the

defendant's means, and, as at present advised, I would not be prepared to introduce legislation on the subject."

Sir Reginald Blaker chipped in with a supplementary question, which may be quoted as an indication of what the average man mistakenly believes the position to be. He said:

"Is it not a fact that before any such order can be made judicially, there must be evidence before the justices of some means on which the order was originally made?"

Sir H. Samuel replied that he believed that that was not necessary in law, but that it was customary in practice.

The trouble is that Ministers, like many others in high places, don't know what is going on, and, I strongly suspect, don't want to.

Another large class of persons who are imprisoned because of non-payment of money is that of the Rate defaulters. In 1929 the magistrates sent 2002 persons to prison because they had not paid their rates. The law says a committal order shall not be issued where the defendant proves to the satisfaction of the justices that his failure to pay is due to circumstances beyond his control. (Rating and Valuation Act, 1925, Sec. 2 (3).) There are many magistrates who do not know this, and think they are bound to make committal orders. There are few defaulters who can remind the justices of their power. But even when the point is raised the defendant has to prove his inability "to the satisfaction of the justices". One is reminded of the old Scotsman who said he was open to conviction, but he "wad like tae see the chiel wha could convince me".

The following are examples of the amount of satisfying the magistrates take. All happened in 1932. The details are within my own knowledge, and I confine my statement to the evidence given in court.

The first case I quote from the report in a local paper, dated 30th April, 1932:

"Mr. —— appeared in one or two cases, and in the first he stated that the defendant had a wife and three dependent children and his only income was 19s. 6d. a week. Since last June he had been unemployed, and had only done a fortnight on relief work. The man served through the War in the —— and the Black Watch and was wounded four times. He had no pension.

Replying to the Chairman, defendant said he was a miner, but could not follow that employment because of eye trouble.

Mr. —— (the Chairman): 'With a wife and three children you ought to be able to get some work.'

Mr. —— (the Solicitor): 'There are a good many unemployed at the present time who have not been through the War.'

Mr. —— (the Chairman): 'Is there much wrong with your eyes? You don't wear glasses. Men have to work to-day, even if they have to wear glasses.'

Mr. —— (the Solicitor): 'He is not likely to get work in the pits with nystagmus.'"

The case was adjourned for a month to enable inquiries to be made by the Rate Collector. Ultimately, on strong pressure, the Bench did not make a committal order, but they refused to excuse the rate, and told the Rate collector he could apply again if the man got work.

In another case on the same day before the same bench a man who had served in the Navy in three wars, and was, as he stated on oath, getting 25s. a week on which to keep a wife and one wholly and one partly dependent child, owed £9 6s. 0d. for rates. The partly dependent child earned 10s. a week. He was committed for twenty-eight days, suspended for twenty-eight days to give him time to find the money! The amount was in fact found, but mainly through the

Royal Naval Benevolent Fund and friends. This man formerly paid 10s. a week for rent, but the landlord had changed this arrangement to 7s. a week, the tenant paying rates. This is becoming a common practice, for the Corporations are, as a rule, more merciless and have greater powers than any landlord. The Chairman, a man well over seventy-five years of age, made a few comments. I quote from the local paper:

"The Chairman: 'It is a pity he stays in premises where he is liable for rates which he cannot pay.'

Mr. —— (the Solicitor): 'The difficulty is, where can the man go?'

The Chairman: 'There are houses enough being erected to-day at the ratepayers' expense.'

Mr. —— (the Solicitor): 'There are no working-class houses being erected, except by the Council, and we know the difficulty there.'"

In a third case it was stated, without contradiction, that a defendant had started to work on a road scheme three weeks previously, but before that he had been unemployed for two years, during which time he had been sent to prison three times for non-payment of rates, the last time being the previous February. In this case also a committal order for twenty-eight days, suspended for twenty-eight days, was made.

These men could not, of course, afford to pay to be legally represented. I was the solicitor concerned, on the instructions of the British Legion. About a dozen other defendants, unrepresented, received short shrift, committal orders for twenty-eight days, suspended for twenty-eight days, being made as a matter of routine. There was, however, one amusing exception. A man told a good story of unemployment and a starving family, and the Chairman, probably anxious to show the injustice of some earlier comments I had made, remarked that "*this* seems a genuine case". The defendant remarked that the

rate collector had formerly excused payment. There was another interposition:

The Clerk: "That was very kind of him. It is as well to get a little praise. I suppose Mr. —— hears a good deal of the opposite."

Ultimately this man was excused. The amusing part of the story was unknown to the justices. As a matter of fact I happened to know that the man had a week or two previously received several hundred pounds.

These are not exceptional cases, but fairly representative. I have known worse. Neighbours and relatives help to pay, and children go short of food and clothes, and even then 2002 go to gaol.

Rate defaulters are almost always treated harshly by the magistrates. Usually they are dealt with in batches, and practically no individual attention is given to the cases. Almost always the bare statement of the rate collector, often unsworn, and usually based on hearsay, is accepted as final with regard to any point in dispute. It is usually fairly obvious that the bench feel that if anyone is allowed to get out of paying rates there will be more for the others, including themselves, to pay.

During 1929 the number of persons imprisoned in default of payment of income tax was only eighty-four. In April 1932 a High Court Judge expressed his astonishment at hearing that the Inland Revenue authorities should be willing to accept a composition of 10s. in the £ on a sum of about £70,000 owing by a man usually in receipt of a large income. It is obvious that income tax is not collected so harshly as rates.

In 1929 there were in all 12,708 non-criminal debtor prisoners. Of these, 9308 were committed by the magistrates. (Report of the Commissioners of Prisons for 1929, p. 90.)

But in addition to these non-criminal prisoners

there were in 1929, 8937 committals of men and 2642 of women, 11,579 in all, for non-payment of fines. In only 4034 cases out of the 11,579 had time to pay the fine been allowed. In 411 instances the prisoners were under twenty-one years of age.

In all these cases, including both civil debtors and those committed in default of payment of fines, the position has been aptly summed up by Mr. Claud Mullins, the Metropolitan Police Magistrate, in an article in *The Justice of the Peace* to which I have already referred. Mr. Mullins says:

"The offender may originally have been guilty of an offence against the criminal law, or he may not, but he is sent to prison simply and solely because he will not or cannot pay money."

It is generally supposed that the magistrates are compelled to give time for payment of fines. Even the Report of the Commissioners of Prisons (1929) refers to the time,

"before the Criminal Justice Administration Act, 1914, required time to be given for payment of fines."

This was the intention of the Act. In effect, however, it left the magistrates free to do very much as they pleased. What the section actually says is as follows:

"A warrant committing a person to prison in respect of non-payment of a sum adjudged to be paid by a conviction of a Court of Summary Jurisdiction shall not be issued forthwith unless the Court which passed the sentence *is satisfied* that he is possessed of sufficient means to enable him to pay the sum forthwith, or unless, upon being asked by the Court whether he desires that time should be allowed for payment, he does not express any such desire, or fails *to satisfy* the Court that he has a fixed abode within its jurisdiction, or unless the Court *for any other special reason* expressly directs that no time shall be allowed."

(Criminal Justice Administration Act, 1914, Sec.1 (1).) The italics are mine.

The exceptions enable any bench to drive a coach and four through the section. In practice many Courts, as we have seen, ignore the obvious intention of the section, and compel a defendant who wishes to ask for time to wait until the rising of the Court. In some courts a defendant is seldom told of his right to ask for time. In addition, there does not appear to be any obligation at all for the Court to give time for payment of witnesses' expenses when the payment of costs is ordered, and in some courts time for payment of these is always refused.

It is necessary that the justices should be compelled to inflict an inclusive fine, and deprived of the right to grant costs to the prosecution in addition. It is unfair that a motorist convicted by a Midland Court should be exceptionally penalised because the witnesses against him have to come from Blackpool or Brighton. Yet this constantly happens.

The Criminal Justice Administration Act, Sec. 5 (1) provides that:

"A Court of Summary Jurisdiction in fixing the amount of any fine to be imposed on an offender shall take into consideration, amongst other things, the means of the offender so far as they appear or are known to the Court."

This provision is ignored by many courts. A fine is often imposed of such an amount that the bench are perfectly well aware that the defendant cannot possibly pay it. I have, for instance, known an unemployed man, obviously entirely without means, fined £5 for assault. The man, incidentally, had been a professional boxer, but his opponent, a much bigger man, was unaware of this at the time the provocation, which was considerable, was given. But the point is that the justices knew the defendant could not pay. If there was to be a conviction, a sentence of imprison-

ment without the option of a fine might have been justified. To impose a fine which a man cannot possibly pay can never be right.

With regard to these different classes of imprisonment for debt it is, of course, impossible to suggest any general remedy. So far as County Court committal orders are concerned it would probably do good if judgment summonses were not allowed to be issued against manual labourers and others against whom default summonses are not permitted. A preliminary weeding out of judgment summonses by the Registrar would also do good, by giving the Judge more time for consideration of the cases before him.

With regard to fines, the law should be altered and the magistrates' discretion diminished. It should be made clear that the fines imposed should be within the offender's power to pay.

As to maintenance orders the position is a difficult one. The law should, of course, be amended to prevent committal orders being made except upon proof that the man has made wilful default in payment. It should also be made easier to obtain a variation of orders, and the justices should be prevented from making the issue of a summons to vary conditional on the payment of arrears. Incidentally, it seems probable that a husband who does not make an application for the discharge of a maintenance order within six months of his wife's adultery may be out of time, and may have to continue to support an adulterous wife.[1] Personally, I do not see that this position is so appalling as most people seem to find it. He can get a divorce, and I fail to see how, under the circumstances, he suffers any devastating injury. But, while the present position is grossly unfair to a large number of men, there are a number of husbands who deliberately evade payment of orders

[1] Since this was written the point has been definitely settled in favour of the husband, contrary to previous dicta.

which they are quite able to satisfy. Imprisonment should be retained for such cases, but further remedies, such as compulsory deductions from wages, should be enacted and applied.

The most effective reform, however, would be a thorough overhauling of our matrimonial law and procedure, including easier divorce. By removing grievances this would make the working of maintenance orders easier.

With regard to rates, the onus should be placed upon the local authority to satisfy the court that the defendant has, or has had, the means to pay. At present the onus is on the defaulter to satisfy the bench that he has not the means.

Ultimately, however, no remedy will be satisfactory until the magistrates themselves are reformed. As usual in our system of justice, it is they who are the root of all evil.

CHAPTER XII

RICH AND POOR

THE rich will always have advantages over the poor. If this were not so, they would not, in any ordinary sense, be the rich. It is idle to suppose that laws can ever be made which will have exactly the same effect when applied to rich and poor. In civil proceedings the poor have one or two advantages. The other day I was discussing what appeared to be a very strong defence with an experienced barrister. He remarked, " There is only one cast-iron defence with no possible flaw in it—I've got nothing."

There is a great deal of truth in what he said, and it applies to claims as well as defences. Very many times an insurance company, and fairly often a private defendant settles a claim to which there is a perfectly good defence, because the cost of fighting it could not possibly be recovered from the claimant. There are certain solicitors, well known to the insurance companies, who trade on this. Now that the " Poor Persons " system is in fairly good working order, it is probable that something should be done to prevent the bringing of purely speculative actions. In former days it was said, with considerable truth, that if it were not for solicitors who were prepared to undertake speculative actions many poor people would be left without remedy. This is not the case now.

In criminal cases, however, the poor are heavily handicapped, especially in the Magistrates' Courts. It is often asserted that no real advantage is gained by the rich man who pays big fees to eminent counsel.

It is perfectly true that some fashionable counsel are not, inside the legal profession, estimated anything like as highly as they are by the lay public. But, allowing for this, there is a great difference in effectiveness between the more and the less expensive counsel.

I found an interesting example of the difference between theory and practice in this respect in a newspaper article on the late Sir Henry Maddocks, K.C., who was a well-known barrister, with a large experience in criminal cases. Sir Henry is reported to have said that too big a proportion of briefs were in the hands of too small a proportion of lawyers, and he implied that this was quite unnecessary. Yet later in the article there is a story of how Sir Henry had recently heard that a Birmingham man who had served with his son as batman during the war was being charged with some offence at the Birmingham Quarter Sessions. What did Sir Henry do, according to the article? "He immediately briefed Mr. Norman Birkett to defend the man, and Mr. Birkett secured his discharge."

In serious criminal cases very large sums are often spent on the defence. For instance, in a recent prosecution connected with the affairs of a certain company £15,000 is said to have been the amount of the costs incurred by one of the accused who was acquitted. Is it suggested that a man of long business experience spent such a sum for sheer love of lawyers?

A terrible problem is presented by a recent Liverpool case. I omit names because, notwithstanding the ultimate result, there must be people to whom the facts are painful. A man was convicted of murder and condemned to death. There can be no doubt that the verdict of the jury was based, not upon the evidence given at the trial, but upon what they had read in the newspapers about the preliminary proceedings and upon the usual kind of gossip. The accused had little money, but influential friends.

He appealed, and the Court of Criminal Appeal acquitted him, setting aside the verdict of the jury.

But the costs of the defence at the trial and the appeal came to £1526 11s. 6d. What would have happened had the £1526 11s. 6d. been unavailable? Would the man have been hanged? There is, at the least, an awful risk that he would have been.

Mr. Clynes, then Home Secretary, stated in the House of Commons that no compensation could be given to this man, who had so narrowly escaped an unjust death. A Conservative M.P. asked whether it would not be possible to make some grant towards the heavy expense of the defence, and was told it was impossible. Mr. Clynes, when further pressed by a Labour member, said that he was advised that to take into consideration the question of compensation in this instance would bring him into conflict with fundamental principles of British law, and that he could not consider the question of creating a precedent.

Even for Mr. Clynes, the worst Home Secretary within living memory, this answer seems silly. It is easy to understand that to create a precedent would fill a Labour politician of his type with horror, but to what "fundamental principle of British justice" did he refer? When a police court conviction for, say, assault, is quashed by Quarter Sessions on appeal costs are sometimes given to the successful appellant. What "principle" can there be to differentiate this from a case where a conviction for murder is quashed by the Court of Criminal Appeal? It is true that in the first-mentioned appeal the costs are granted by Quarter Sessions and not by the Government, but this is not a question of principle. Actually there was a principle involved, one very dear to Mr. Clynes and those who resemble him. It was the great official principle of never admitting a wrong, and sticking to a mistake through thick and thin. The case of ex-Inspector Syme is another illustration of this principle.

Consider the Rouse case. The cost of the prosecution was about £2500. If the means of the defence had been equally unlimited important expert evidence to rebut the testimony given for the prosecution would have been available at the trial, instead of when it was too late. In other important cases funds for the defence are said to have been provided by newspapers. Does anyone suppose that this is a proper thing? We have already seen the ridiculous inadequacy of the allowances under the Poor Prisoners' Defence Rules, and it must be remembered that under this procedure a counsel is assigned to the accused. All counsel may be learned, but they are not equally effective.

I was myself recently concerned in a case of attempted murder. With difficulty the relatives of the accused scraped up a sum of £65 for the defence, or rather guaranteed it. There was a very lengthy hearing before the magistrates, extending over five or six appearances, and a two days' trial at Assizes, resulting in a conviction. Our only experts gave their services free, and the rising young barrister who did everything humanly possible for the defence was very reasonable in his fees, especially when one considers that he was opposed by a well-known K.C. and a very experienced junior. The expenses of the prosecution amounted to £750. I am not suggesting a miscarriage of justice. That point is irrelevant. But £750 to £65 does not seem in accordance with the principle that the two sides should be put before the court as forcibly as possible.

I have tried to show how little chance an undefended man or woman has before the magistrates in a police court. By the Poor Prisoners' Defence Act, 1930, it has for the first time become possible for poor persons to be granted free legal aid in the police court. Actually a considerable number who could not afford to pay have always been defended, but this has been due to private benevolence or to

various societies and unions. I very much doubt whether the Poor Prisoners' Defence Act has made any appreciable difference. The magistrates dislike defended cases, and the grant of legal aid is in their discretion. The actual words of the section are:

"If it appears to a Court of Summary Jurisdiction . . . that the means of any person charged before them with any offence are insufficient to enable him to obtain legal aid, and that by reason of the gravity of the charge or of exceptional circumstances, it is desirable in the interests of justice that he should have free legal aid in the preparation and conduct of his defence before them, the Court or Justices may grant in respect of him a certificate . . . and thereupon he shall be entitled to such aid and to have a solicitor . . . assigned to him for that purpose in the prescribed manner."

So far as I have been able to ascertain, the Act is, in the provinces, practically a dead letter. With regard to the question of means I have quoted an instance where a Chairman of over twenty years' standing as a magistrate held that a man who had nothing but 15s. 3d. a week unemployment pay was able to pay for legal aid. Doubtless the man was expected to exercise intelligent anticipation as to the probability of his being charged with some offence, and to set aside the 3d. until he had a sufficient sum. The scale on which legal aid is granted is considerably lower than the open market, having regard to the fact that the case must be one of gravity or involving exceptional circumstances.

Incidentally a bastardy application does not come within the Act. An undefended man has usually no chance at all before the magistrates on any such application, and thousands of men go to prison for making default in payments under affiliation orders. The law, especially with regard to corroboration, is exceedingly difficult to understand, even for a lawyer.

Anyone who doubts this may refer to the case of Thomas *v.* Jones (1921), 1 K.B. 22, and, if he is not then sufficiently confused, he may extend his education by a consideration of the cases dealing with the question of when a married woman may be a single woman for the purposes of affiliation proceedings. If he can reconcile these, let alone understand them, he will be able to do more than the High Court can.

The laws with regard to betting and gaming and their administration provide the best (or worst) example of differentiation between rich and poor to be found in this country. It is probable that the laws against gambling were originally aimed against the improvident poor. Their interpretation and administration seem to show the same spirit. Most people have some idea how imbecile our laws about betting are. A Commission is shortly to sit to consider them. I propose merely to give a few examples of how they hit the poor and not the rich.

Betting is not in itself illegal, but it becomes so under certain conditions. These conditions, in every instance, are such as apply to the poor only.

To bet with a bookmaker at his office over the telephone is legal, but to go to the office to make the bet is a serious offence. To send a bet by letter or telegram is legal, but magistrates invariably hold, though the point is somewhat doubtful, that to send the bet by messenger, although in a sealed envelope, is illegal. To bet on credit is legal, but not to deposit the money with the bet. To bet in a club is legal, to bet in a pub is a crime. If I live next door to a bookmaker I may safely post him a letter containing a bet, but if I hand him the same letter over the hedge we are both committing an offence.

An exception with regard to the illegality of ready-money betting arises in the case of race-courses. Those who can afford to attend horse-races at an

approved race-course can bet to their heart's content, and put down the money every time. But not so if they try to do the same thing with a street bookmaker in their own town, although they may bet on the same horse in the same race at the same time. The history of this exception as to race-course betting is of some interest. In 1896 a Mr. Hawke, an enthusiastic anti-gambler, prosecuted a bookmaker named Dunn, and on appeal the case came before a Court specially formed, consisting of five judges—Hawkins, Cave, Wills, Wright, and Kennedy, J.J. The point for decision was whether " Tattersall's Ring " at Hurst Park was " a place " within the meaning of the Act so that the defendant could be convicted for betting with persons resorting thereto. The judges took three months to think it over, but ultimately decided that it was, and remitted the case to the magistrates with directions to convict. Those who are old enough to remember the music-halls and pantomimes of that period will recall the innumerable jokes then current with regard to " a place within the meaning of the Act ".

But the decision was too serious for a great number of people to be allowed to rest where it was. The decision in Hawke *v.* Dunn being a criminal matter could not be carried to a higher court, but in order to settle the point an action was brought to restrain the Kempton Park Race-course Company from opening or keeping an inclosure on a race-course and allowing it to be used by bookmakers. This case was taken to the House of Lords, whose judgment, though in a civil action, in effect overruled the decision in Hawke *v.* Dunn.

Any one who is interested in legal quibbling may read further in the cases of Hawke *v.* Dunn (1897) 1 Q.B. 579, and Powell *v.* Kempton Park Race-course Co. Ltd. (1897) 2 Q.B. 242 and (1899) A.C. 143. Another pretty point was taken in the case of Bows *v.*

Fenwick L.R. 9 C.P. 339, where it was held that a large umbrella stuck in the ground and kept up, rain or dry, by a bookmaker constituted " a place within the meaning of the Act ".

Now, by the Race-course Betting Act 1928, nothing contained in the Betting Act 1853 applies to any race-course in respect of which a certificate has been issued under the Act. In addition, the erection of a totalisator by the Race-course Betting Control Board has been authorised. But the harrying of the street bookmaker and the workman who wants to have his sixpenny or shilling bets still continues as vigorously as ever.

The Royal Commission on Police Powers and Procedure reported in 1929 as follows :

" From the evidence which has been given before us we are satisfied that street betting presents an almost insoluble problem for the police at the present time, partly because of the difficulty of detecting the offence, but principally because a considerable section of public opinion regards the present law as class legislation and supports the street bookmaker and the small backer. In consequence the efforts of the police to enforce the law can at best only effect some reduction in the volume of street betting and are bound to result in a distinct worsening of relations between the police and the public which necessarily impairs the effectiveness of the former in dealing with other forms of crime." (See p. 79, par. 205 of the Report.)

The Select Committee appointed in 1923 to consider the question of imposing a duty on betting reported that the law as to betting was " confused and inconsistent " :

" It is open to this criticism—that a man of good credit or a rich man can bet to any extent without any penalty, while a poor man, if he bets at all, is liable to criminal penalties, as is the bookmaker with whom he bets. . . . There is evidence that this inequality of the law produces a strong feeling of resentment among

large numbers of the population, more particularly in the districts where street betting is practised."

This was in 1923, and nothing has been done to alter the law, though, as a result of the Irish Sweepstakes, yet another Commission has been appointed. Does anyone suppose that if Hawke *v.* Dunn, which affected wealthy interests, had not been overruled, there would not have been immediate legislation to deal with the position?

Another matter which has not passed unnoticed by the poorer classes is the amazing leniency with which offences in connection with the sale of tickets in the Irish Sweepstakes have been treated. Heavy fines, often of £50 and sometimes of £100, are commonly imposed in connection with betting offences. On 29th April, 1932, an old couple, each sixty-nine years of age, were summoned for using the house they occupied for unlawful betting. The police said betting had been going on for some time, but not on any large scale. For the defence it was pleaded that the old people were unable to do much to make a living. They had a little greengrocery business but it brought in only £2 a week and they had to find £1 a week under a mortgage as well as rates and taxes, etc. Under these circumstances they had been compelled to find some further means of living, and had taken up this betting business. The husband had had a stroke, and become half-paralysed. He would be permanently ill, and the betting business had been given up. Whatever penalty was inflicted would have to be paid by friends and children of the defendants with great difficulty over a long time. The defendants were fined £10 and costs. The case is reported in a local evening paper for the same date. Less than a month later a man was summoned in a neighbouring town for selling tickets in an unauthorised lottery, i.e. the Irish Sweepstakes. The Chief Constable, who conducted the prosecution,

went out of his way to criticise the law, and said that the prosecution tended to bring the law into ridicule, although it had been taken and instituted by order of the Home Office. It appeared that the defendant knew it was illegal, and had dealt with a large number of tickets. Jokes were made by the Chief Constable as to whether there were any magistrates' names on the counterfoils. The defendant was fined 1s. with 3s. 6d. costs. The facts are taken from a local evening paper. About the same time, in another court in the same district, another defendant was fined 1s. on each of four charges for selling sweepstakes tickets.

On 27th June, 1932, I was in a certain court when a man was charged with loitering for the purpose of betting. He pleaded guilty, and it appeared that there were previous convictions for betting against him. The man said that he could not do anything else and had a family to keep. The Clerk told him he was liable to be sent to prison without the option of a fine, but ultimately he was fined £10. The Clerk, to my own knowledge, bought at least one ticket in the Irish Sweep. These facts, except as to the Clerk's purchase of a ticket, are reported in a local evening paper.

The maximum penalty in these sweepstakes cases was three months' imprisonment or a fine of £25. But magistrates and all kinds of people of the upper and middle classes have bought and sold sweepstakes tickets. In one court a magistrate is reported to have, very properly, left the bench on the hearing of such a case, saying he could not adjudicate as he had himself bought a ticket. This offence is not, like street betting, confined to the working-classes.

There is a great difference in the position of rich and poor with regard to the law as to matrimonial relations. Since "Poor Persons" Divorce came more generally into operation matters are not quite so bad as they were, but only the fringe of the grievance has been touched. As the result of pressure from the

legal profession, mainly I believe from the Bar, the regulations as to Poor Persons' Divorces are to be more strictly enforced. As it is, for practical purposes only clear and undefended cases are dealt with.

In London at the present time the income limit for "Poor Persons" is usually £4, and in the provinces £2, a week. £4 a week is the extreme limit of income anywhere. A "Poor Person" must not be worth more than £50, or in exceptional cases £100, excluding wearing apparel and tools of trade. I know that borderline cases will always be hard, and I give the following instance, with regard to which I was consulted during the week in which this was written, because it is typical of a large number of others.

A woman was deserted by her husband ten years ago, and has earned her own living ever since as a clerk. Through the police she has just heard that her husband, of whom she had previously had no news whatever, has been convicted of bigamy and burglary and sentenced to a term of imprisonment. The woman is anxious to obtain a divorce while she knows where her husband is. She is now in receipt of a salary of £2 a week. By rigid economy she has accumulated War Savings Certificates to the present value of £100. She owns furniture to the value of about £30. She has no relatives to assist her, and is now thirty-eight years of age. Nothing but her little savings stand between her and illness, or destitute old age. A woman clerk's wage tends to decrease rather than increase after she is forty. The woman is clearly ineligible for a "Poor Person's" certificate, but even an undefended Divorce suit costs at least between £60 and £70 under the ordinary scale of costs. Of this court fees alone amount to over £10, and in addition there is counsel to be paid and witnesses to be found, transported and maintained. In this particular case it has been possible to make arrangements, but there are thousands of others in a similar position. If

the County Courts were given Divorce Jurisdiction these people could afford the £19 to £20 or so which ought to be fully sufficient. As regards the competence of an inferior court to try the issues arising on a Divorce suit, it is only necessary to point out that even the magistrates are considered fit to try, and do try, these issues, including that of adultery, on the hearing of applications for separation and maintenance orders.

In other respects the idiocy of our Divorce laws presses with equal hardship on rich and poor alike, except that a husband is generally treated much more harshly in relation to maintenance by the magistrates than by the High Court, in proportion to means. The necessity for a working-man with children, of having a housekeeper, usually leads him to disqualify himself for a divorce within a few months of his wife leaving him.

A great hardship for the poor is that it is exceedingly difficult for them to get redress for libel and slander. A working-class girl or woman may, for instance, be cruelly slandered by imputations of unchastity, and have, for practical purposes, no redress whatever. She can only commence an action in the High Court, an expensive matter even though under certain circumstances it may be remitted to the County Court. It is often argued that to give a cheap remedy for defamation would lead to the courts being flooded with actions. To some extent this is true, but the fact remains that in this respect rich and poor are not equal before the law. The most convenient reform, things being what they are, would be to enact a summary remedy before the magistrates or the County Court for libel and slander, with a maximum sum of £5 recoverable and strict requirements as to corroboration. The present state of things often creates an intolerable position for harmless people, and not infrequently leads to suicides, in addition to breaches

of the peace of various kinds. On innumerable occasions I have been compelled to explain to unfortunate people that the law gives them no redress, except at a cost beyond their means. For practical purposes the Poor Persons' Rules are, and must always be, useless to afford relief in such cases.

Punishment by means of fines is a method the unfairness of which to the poor is so obvious that it is often overlooked. Only to a very small extent do magistrates vary the fine according to a person's means. Often the maximum fine is so small, in relation to the means of the offender, that it is no punishment at all. Yet the alternative of imprisonment is practically never used. Take the case of common assault, the maximum penalty for which is two months' imprisonment, or a fine of £5. For assaulting the police it is six months, or £20. Generally speaking, an undergraduate on Boat Race Night, and an unemployed workman, will get the same 40s. or 20s. fine. The same kind of thing happens in motoring prosecutions. If the justices had any imagination, and could see the difference between fines which come out of the price of meals and childrens' boots and clothing, and those which come out of spare cash, they might act differently. But a fine is a form of punishment which does not necessarily fall upon the offender at all. A writer in the *Law Journal* for 18th June, 1932, points out that a fine is the only form of punishment which may be suffered vicariously. It is not unusual, when the fine is small, for the magistrates or their clerk to find the amount for an offender. It constantly happens that fines are paid by friends or relatives. Sometimes, as in the case of Passive Resisters or Suffragettes, they were paid by opponents in order to annoy would-be martyrs. But, as the writer in the *Law Journal* says, we have not yet seen a judge step down from the bench and volunteer for the scaffold, nor have magistrates volunteered for prison or the birch.

I have already referred to the case in which an Inland Revenue prosecution against a very wealthy man was withdrawn because of medical evidence that to put him on his trial would endanger his life. While this case was freely commented on by the working classes, it did not, so far as my experience went, cause any special resentment. The significant and important thing about it was that it was treated, by the poor, as only what was to be expected.

One of the most important differences between the position of rich and poor before the law is in connection with insolvency. There are few better examples of taking from him that hath not even that which he hath.

Roughly, the position is this. Bankruptcy is a proceeding by which a debtor gives up all that he has to an appointed officer, who distributes it rateably among the creditors subject to certain priorities. By taking this course the debtor is protected against all past claims, and, after undergoing a public examination and certain formalities, he can, if he has been guilty of no serious misconduct, obtain his discharge after a certain interval of time.

A debtor may be made a bankrupt on a creditor's petition, but we are now concerned only with persons who use bankruptcy for their own protection. The trouble for the poor man is that, even if he files his own petition without the assistance of a solicitor or accountant, he has to find a stamp fee of £5 and a deposit of £5, in all £10. This puts bankruptcy out of reach of the destitute, for the creditors will not make a destitute debtor bankrupt unless for very exceptional reasons. Bankruptcy, though it has many inconveniences, has advantages as well. For instance, personal earnings, not exceeding an amount sufficient for the support of the bankrupt and his family, do not pass to the Trustee in Bankruptcy, and a bankrupt may earn and spend a fair income without his creditors

being able to touch a penny, although, but for bankruptcy, the debtor would probably have been committed to prison for non-payment. It has been held by the High Court that it is legitimate for a debtor to make himself a bankrupt in order to get rid of a committal order under a judgment summons.

The ordinary layman often wonders how it is that certain persons manage to remain apparently prosperous notwithstanding their bankruptcy. The reason is usually that the bankrupt, while still prosperous but contemplating hazards, has made a settlement or settlements upon his wife. Such a voluntary settlement is absolutely void if the settlor becomes bankrupt within two years of its date, and is void on bankruptcy within ten years unless the settlor can show that at the date of the settlement all his debts could be paid without resorting to the settled property. These conditions are not difficult to fulfil for a rich man, who is then free to carry on a speculative business on the "heads I win, tails you lose" principle.

In addition, a settlement made before and in consideration of marriage is protected, unless both parties to the marriage know that it is fraudulent and intended to defeat creditors by means of the marriage.

A sound knowledge of the bankruptcy laws is necessary if they are to be made use of to the fullest extent, but anyone in possession of £10 and owing £50 or more can succeed in avoiding imprisonment for debt, which, as we have seen, is a very real danger to poor debtors. It is true that for debtors who owe less than £50 there is a system of composition with creditors carried out through the County Court, but it is a good deal less advantageous to the debtor than bankruptcy.

The procedure is shortly as follows. When a County Court judgment debtor cannot pay forthwith, and does not owe more than £50 in all, the Court may make an order for the administration of the debtor's

estate and the payment of his debts by such instalments and to such an extent as the Court may think practicable, and subject to such conditions as to the debtor's earnings or income as the Court thinks just. Such an order can be applied for by a debtor on filing a request and giving the necessary particulars. The Court may then stay all proceedings until the hearing of the application, and, after hearing the creditors, the order may be made. If made, the debtor is protected from his creditors so long as he pays the instalments ordered, but on the other hand he has to pay the instalments, and may be committed to prison if he does not do so. A bankrupt is not obliged to pay any particular sum. In practice, a very small proportion of judgment debtors make use of the provisions as to administration orders.

So far as the law of Landlord and Tenant is concerned the poor are at a heavy disadvantage. The great majority of people in this country live in houses at weekly rents and subject to a week's notice to quit. It is significant that among the working classes "the home" means the furniture, never a house. "It's no use me keeping on the house, for she's taken the home," was the typical remark of a bricklayer in a separation case in which I was concerned a short time ago. That there was no sentimental implication was shown by his adding, "and she's welcome to keep it if only she'll stay away herself".

It is necessary to consider the position under the Rents Acts. These Acts apply to houses of which either the standard rent or the rateable value does not exceed £105 in London, £78 elsewhere in England and Wales, and £90 in Scotland. They do not, however, apply to houses built after 2nd April, 1919, and since 1923 a number of houses have become "decontrolled" under the Act which came into force in that year. The Acts at one time probably applied to 98 per cent of the dwelling-houses in Great Britain.

(See Report of the Inter-Departmental Committee on the Rents Restrictions Acts, p. 15.) Subject to a number of conditions and exceptions, the Acts prevent a Landlord from obtaining an Order of the Court giving him possession of a house occupied by his tenant. Possession of a controlled house can only be recovered through the Court, and all the conditions and exceptions are subject to the overriding proviso that the Court is not to make an order unless it considers it reasonable to do so.

The Rents Acts are badly drawn, have been frequently amended, and have proved very difficult to construe. Both the House of Lords and the Court of Appeal have had very hard nuts to crack in the shape of appeals under the Rents Acts. High Court Judges have often been at sea with regard to points thereunder, and inconsistent decisions have had to stand until cases went to the Court of Appeal.

Take one instance of their complications. Section 5 of the Act of 1920 is the vital one, as it restricts the Landlord's right to possession. It has seven subsections, of which the first has provisos numbered respectively, a, b, c, d, e, f, g, h and i. And proviso (d) is subject to no less than four exceptions, each of considerable length and importance. Almost every word in this lengthy section has had to receive judicial interpretation.

Another instance arises under Sec. 12 (1) (g) of the same Act. After a number of conflicting dicta extending over a period of years it is now settled that if a "Statutory tenant" dies intestate (i.e. without a will) leaving his widow living in the house, she is protected by the Acts and can continue the tenancy. If, however, the tenant dies, and by his will leaves his interest in the tenancy to his widow, she is not protected and the Landlord can turn her out if he chooses.

The judges have exhausted their powers of sarcasm in commenting on the difficulties arising under the

Acts. It is obvious that, while a housing shortage combined with extensive unemployment and poverty continues, questions of tenancy are of vital importance to great numbers of people. Yet for the great majority of people the Court which has to decide, in case of dispute, whether their tenancy is to continue or not, is the Magistrates' Court. All cases where the rent is at a rate not exceeding £20 a year, the equivalent of 7s. 8d. weekly, can be brought before the magistrates. It is true that the Landlord can, if he wishes, enter the case in the County Court, but in practice such a course is almost unknown. I have often known rents actually reduced to bring them within the jurisdiction of the police court. Landlords know perfectly well how easily ejectment orders can be obtained before the justices. There was a bench of magistrates in Kent a few years ago who realised how unsuitable the "police court" is for such cases, and wished to refuse jurisdiction on the ground that the County Court was the proper place for them. But the High Court held that they could not refuse to hear and determine the application.

In law the onus of showing that a house, within the 1914 rental limit of £105 in London and £78 elsewhere in England and Wales, is not controlled by the Rents Acts is on the Landlord. In practice before the magistrates the question, as often as not, is never raised, and even if it is, the bare statement of the Landlord or his agent that the house is decontrolled is constantly accepted as sufficient evidence. Actually the question is usually an exceedingly difficult one of law and fact for the Court to decide. It is not without significance that the instance already referred to, in which certain justices were ordered to pay costs in consequence of their having failed properly to state a case for the High Court, arose under the Rents Acts.

Magistrates almost always dislike the Rents Acts. Very many of them are the owners of small house property. The type of "Labour" justice usually

appointed generally owns a house or two. And in addition there is the usual magisterial prejudice in favour of the applicant, the prosecutor, the person who has come to the Court asking them to do something. I have been concerned in hundreds of applications. I may have heard thousands. Very few have not involved considerable hardship, sometimes to landlord as well as tenant. Let any reader of the upper or middle classes consider what it must be like to live in a house on a tenancy subject to a week's notice, and to be liable to be turned into the street with one's furniture and family when the notice has expired, with the alternative of lodgings or the workhouse.

The Inter-Departmental Committee on the Rents Restrictions Acts which reported in 1931 considered that, even after the present shortage of houses was over and general decontrol came into operation, it would still be necessary to provide that a notice to quit in the case of small house property should not be effective until after the expiration of some specified period, such as six weeks from the date of the notice.

Ownership, whether under purchase schemes from Corporations, or arrangements with Building Societies, is not a desirable thing for a working-man. It ties him to a particular place, and often keeps him from a job. In addition, the terms of Building Society mortgages are often almost unbelievably harsh. One Society's form of mortgage contains a clause under which, on an owner getting in arrear with an instalment, he can be turned into a weekly tenant and ejected from his house after a week's notice. And powers such as these are exercised. They are not merely *in terrorem*.

Thus in the vital matter of housing, as in the case of matrimonial relations, a Court which would not be tolerated by the rich is considered good enough for the poor. In this connection I may point out that in

the case of motorists there have been repeated demands for the constitution of special courts to try motoring offences. Motorists realise the utter unfitness of the magistrates to deal with them, although the Court has almost always the assistance of hearing counsel or solicitors for the prosecution and defence. To a certain extent this demand has been conceded, for in some courts special days are devoted to the trial of motoring cases, and an attempt is usually made to get the more competent justices for such days.

The unfairness of the high cost of appeals from the decisions of the magistrates has already been referred to. In effect this creates one law for the rich and another for the poor, for not only is an appeal usually open only to persons with means, but the knowledge that an appeal can be made produces greater care, and often secures a dismissal.

A source of great discontent not only among the working-classes but with the police is the extreme leniency usually shown by magistrates towards students and other youths of the middle classes who take part in " rags " of various kinds. These " rags " are indistinguishable from what would be called hooliganism, rioting or unlawful assembly if it were indulged in by youths of the lower classes or by the unemployed. The trouble is that this kind of thing is growing. When it was confined to the West End of London on Boat Race night it was an isolated nuisance, tolerable because of its traditions. But now every sort of Agricultural or Engineering " college " in every kind of provincial town thinks itself entitled periodically to attend theatres and music-halls, insult the performers and attendants, and raise hell in the streets to any extent, without the police putting a stop to these antics in a way that would quickly be adopted if the working-classes followed such an example.

I remember a good many years ago being one of a number of stewards at a meeting which students of

a certain provincial university tried to disturb. After considerable provocation they were thrown out, and, a good many of the stewards being of the "chucker-out" profession, not too gently. The pleasure openly expressed by the police who watched this done interested me. On this and on another occasion a few years later, when a justly incensed theatre manager employed a number of professional boxers to keep students from the same university from turning his theatre into a bear-garden, there were letters in the local papers complaining of the "brutality" with which the students had been treated. The writers should have seen the way the police deal with what they consider unlawful assemblies. I do not wish to be misunderstood. I realise to the full that if force is to be used it cannot be used half-heartedly. I am not blaming the police for the fact that, in these disturbances, innocent men not only get badly knocked about but are quite commonly arrested, charged, and convicted of assaulting the police. I do, however, blame magistrates for the latter fact. But what I wish to emphasise is that this treatment is reserved for the lower classes, not because the police wish to have it so, but because of a bad custom which has grown up.

With regard to the way in which cases are tried by magistrates the following is a verbatim extract, omitting names only, from an evening paper (Liberal in politics), less than a year old. I do not vouch in any way for the facts being as stated, and I was not present either at the disturbance or at the court. All I wish to point out is how the case appears to have struck the reporter.

Complained of Injuries.

"J—— H——, aged twenty-four, a labourer, was charged with obstructing a police officer.

At the last hearing H—— complained that injuries

he received to his head and hand were caused by blows from the truncheons of three or four policemen. To-day he still had a plaster over his left eye.

A police-sergeant said when H—— was brought into C—— police station by two constables he had a wound at the back of his head about two inches long and a small wound and bruises on his forehead.

One of the constables said H—— tripped over somebody's foot in the crowd and fell backwards.

When charged H—— did not say he had a broken finger.

H——, from the dock, said the police assaulted him. One hit him on the jaw, and others kicked and punched him.

Mr. H—— S——, a teacher, of ——, said he saw a policeman hit H—— on the jaw. H—— was also struck on the head and was frog-marched to the police station in an extraordinarily violent manner.

In fining H—— £2, with a week to pay, or one month's imprisonment, the magistrate said it was clear that H—— was obstructing the police. With regard to H——'s injuries, according to the witnesses the police had behaved in a scandalous way, but he did not believe the witnesses. At the police station H—— did not make the slightest complaint."

As I said before, I quote this solely because of the effect the hearing appears to have produced on the reporter. The magistrate's concluding remark, however, is almost comic. Was a man, assuming the facts to be as alleged, likely to complain while at the police station?

What is rather depressing to an old-fashioned Conservative like myself is the silly remarks that certain M.P.'s make, both in and out of Parliament, with regard to police matters.

The following is an example, taken from *The Times* Parliamentary report of 3rd May, 1932:

"Mr. Buchanan (Glasgow, Gorbals, Lab.) said unnecessarily large numbers of police were in attendance at meetings of the unemployed in London and the Provinces.

Mr. Howard (Islington S., U.) said that he resented the imputation that the police force was used to protect the rich and tyrannise over the poor. It was necessary for sufficient police to accompany processions of the unemployed to protect these poor people from Communist agitators who wished to use them for their own fiendish ends."

That there is a difference between the attitude of the police towards the poor and towards the rich will be generally admitted. Many people think it inevitable. Personally, I think it is mainly due to the police observation of the attitude of magistrates. The ordinary police officer is not a snob, but, naturally enough, he knows on which side his bread is buttered. Take the following instance which I quote from "This England" column in the *Week-End Review* for 13th February, 1932. I have not verified the reference in the *Evening Standard*, and I omit names:

"Ealing magistrates to-day dismissed summonses against Major-General R—— D—— F—— O——, Oakwood Court, ———, for failing to stop his car when signalled by a policeman and driving without due care and attention at Ealing. Sir W—— B——, Chairman, said they realised a Major-General would be the last person to disobey an order."

Evening Standard.

One wonders how Nelson would be dealt with, could he be brought before Sir W—— B—— on a similar charge.

Another matter in which rich and poor are differently treated by the law is in connection with the sale and consumption of intoxicating liquor. Prohibition came about in the United States mainly through the

efforts of "big business". Large employers, such as Henry Ford, objected to their employees being distracted, and, as some honestly thought, demoralised by drink. Prohibition on this account will not come about here, for "big business" and the employers already, for practical purposes, control the supply of drink.

Take one instance. There is probably no licensing bench in the country that would not refuse the grant of a new licence, whatever public need and demand were shown, if a large employer having his business in the vicinity objected. I have met with this in actual practice again and again. I have known an existing licence objected to by the police because a neighbouring employer thought the house in question was an undue attraction to his men. The police did not of course actually state this, but the fact was notorious, and more than one of the magistrates told me that this was what had influenced their decision to refuse the licence.

One of the most magnificently idiotic examples is the illegality of the "long pull". The actual provision is as follows:

"No person shall, either by himself or by any servant or agent in any licensed premises or club, sell or supply to any person, as the measure of intoxicating liquor for which he asks, an amount exceeding that measure."

Licensing Act, 1921, Sec. 9.

The "long pull", as this is called, was often attacked on the ground that it was unfair competition on the part of the houses that gave it. That this was not the real reason for its prohibition is shown by its being forbidden in clubs. Can anyone believe that there is any reason for such a law other than that mania for issuing orders and forbidding this, that and the other that was one of the consequences of

the war? That Sec. 9 is founded largely on the love of making things "verboten" is shown by the fact that it is not illegal to sell intoxicating liquor at a lower price than usual. But laws such as this are made only when it is the lower classes who are affected by them. Lest anyone should suppose that such a law is only nominally in force I quote the following report of a case in April, 1932, from the *Bradford Telegraph and Argus*. (Once again I am indebted to the column "This England" in the *Week-End Review*, and I have not verified the reference to the Bradford paper.)

"For supplying more beer than was asked for a fine of £5 was imposed at Bradford City Police Court to-day upon Alfred Raithby, of Ripon Street. He pleaded 'Guilty'. Mr. J. B. Willis (prosecuting) said that a man leaving defendant's shop with a jug of beer was stopped by the police. The man said that he had ordered a pint of old and a pint of mild beer at defendant's shop. The police took the man back to the shop, and when the beer was measured it was found to amount to two pints and a third of a pint. It should have measured only two pints."

Closing hours are fixed in order to keep the working classes free from temptation to neglect their work, and occasional extensions are sparingly granted for similar reasons, often openly avowed. In many towns the better-class bars make no pretence at closing in less than twenty minutes or so after time, but the ordinary public-house has to close promptly. Similarly, it is risky for a workman to make a bet in a bar, and there are landlords who will ask a man to leave if he is seen reading the *Sporting Life*.

Music and any sort of amusement or entertainment is usually frowned upon by the licensing justices. I have known a licensee warned by the police that boxers must not be allowed to train at his house, apparently because it might attract customers. Drink cannot legally be consumed after closing hours, even though

ordered and served previously. Thus if a man orders a pint of beer at, say, 9.50 p.m. and closing time is 10 p.m., if he has half a pint left at closing time he must leave it unconsumed.

So harried have the innkeeper and his customers been that the growth of clubs, where there is even yet some freedom, is not surprising. The number of registered clubs in England and Wales in 1905 was 6554. Since then there has been a steady increase until in 1930 there were 13,526. This increase in the number of clubs has been accompanied by a decrease in licensed houses. The expansion of the club movement among the industrial classes is, as the recent report of the Licensing Commission says, significant. Its significance, however, seems to have been to a great extent lost upon them. Clubs are subject to restrictions on the sale and consumption of intoxicating liquor similar to those imposed upon public-houses. They are, however, free from the control of the licensing justices, and are, for practical purposes, not under police supervision. That there are bogus clubs, and some which harbour undesirable characters and are improperly carried on, is true. But the vast bulk of club membership consists of men and women of the working-classes who are sick of being supervised as if they were, at the worst, criminals and at the best, children who cannot be trusted. In the larger towns clubs with memberships of a thousand or even two thousand and over are not rare.

It is interesting to note that the magistrates constantly complain that they have no jurisdiction over clubs. In 1924 an inquiry into the control of clubs was undertaken by the Magistrates' Association. It appeared that 258 benches were in favour of police inspection for clubs and only twenty-two against.

The growth of the club movement among the working-classes shows in the first place that the licensing laws, as they now exist and are administered, affect

them far more than any other class, and, secondly, that this position is resented.

The licensing laws, though irritating to all classes, do not affect the middle and upper classes to the same extent. They usually keep a supply of drink at home, and, if they are residing on licensed premises, the restricted hours do not apply. In addition, most premises where meals are served obtain the hour's extension permitted under the 1921 Act, which in effect operates as an hour and a half, as consumption of intoxicants, supplied with a meal during the permitted hours, may continue for a further half-hour.

Another respect in which the poor are at a disadvantage is in connection with sanitary and other similar regulations and inspections thereunder, especially in the country districts. District Councils are largely composed of property owners, and their sanitary inspectors often take their cue from them, and are not, to put it mildly, unduly energetic in their inspection of small houses, or exacting in their requirements. Certain increases of rent permissible under the Rents Acts are suspended during the currency of a certificate from the local sanitary authority that the premises are not in a proper state of repair. There is often difficulty in getting an official to make the necessary inspection. I have known this delayed for a considerable time, notwithstanding written requests by tenants, and have had to write to the Clerk to the Local Authority making complaint, when the matter was at once attended to. It is also difficult to get some Medical Officers of Health to deal with matters which would involve property owners in expense. There is, of course, no direct corruption, but in the country districts Medical Officers of Health are usually in private practice. They would be more than human if they did not dislike putting themselves in a position hostile to their own patients. Occasionally, too, an M.O.H. will display unusual energy in dealing with

a case in which his own patient is interested. This matter has been dealt with by the Local Government Act of 1929, and future Medical Officers of Health will, as a rule, be whole time men and not in private practice. In the meantime, however, matters are unsatisfactory. I have lived in a country village where the sanitary conditions of certain cottages were almost indescribable. A sanitary inspector who took this matter up was transferred to another district. The M.O.H. was a very old man, in private practice, and nothing was done for at least three years. Whether anything was ever done I do not know, but diphtheria and scarlet fever were rife when I left the place.

Lastly, great discontent is caused by the way in which magistrates, and especially their clerks, constantly make poor defendants and their witnesses targets for attempts at wit. This is a peculiarly contemptible thing, and is bitterly resented.

I have heard a Magistrates' Clerk tell a defendant in a separation case, who had pleaded illness, that, "What's the matter with you is lazeyitis. You're the sort that gets all in a dither at a job of work." In this case there was not the slightest evidence that the man's illness was other than genuine.

In another case I heard a magistrate sneeringly tell a man that he was an old soldier, "and a pretty poor soldier I expect you were, too".

The man replied: "Most likely I was, but I got the Military Medal and the D.C.M., and was promoted sergeant, so I expect I was as good a b—— soldier as you ever were."

There was no apology from the magistrate.

On 8th July, 1932, I was in court on the hearing of an application for ejectment. The tenant pleaded that he had seven children, and that it was hard to get a house.

The Clerk said to him: "You took the responsibility of seven children. I didn't get them. You

should have thought of that when you were getting them."

This was said in open court, and I made a note at the time.

Buffoonery on the bench in husband and wife cases is incessant in some courts. One would suppose that justices and their clerks imagined that those who appeared before them were devoid of ordinary human feeling. As a matter of fact the working-classes, naturally enough, are peculiarly sensitive to anything in the nature of sarcasm. And it is impossible for them to reply to the heavy humour that is aimed at them. I have seen a magistrate criticise a girl's clothes, compel her to remove her hat, and comment on the way her hair was cut, until the poor child burst into tears. It is almost " common form " to tell a deserted wife who is at all voluble in her story that it is no wonder her husband left her. I could give almost innumerable instances. This kind of thing may seem comparatively trivial, but it is far otherwise in its results. And it is only the poor who have to suffer it.

CONCLUSIONS

THE main obstacle to the reform of English Justice is sheer ignorance of the facts. I have tried to set down what I have myself seen and heard. Had I used things I have been told, but have not had the opportunity of verifying, this book might have been more readable. Were it not for the risk, both for the parties concerned and myself, of identification, much more surprising things, which I know to be true, might have been published. I know that by saying this I expose myself to the usual sneer at those who "could, an if we would". But, after all, Horatio and Marcellus could actually have told what they might have hinted at. I hope it will be realised that this book has been difficult to write. Many of the things referred to may seem trivial in themselves. Injustice is never trivial. And the English, more than any other race, have always bitterly resented what they believed to be unjust, no matter on how small a scale it might be. It was not the amount of the demand for Ship Money that caused Hampden to protest.

I am certain that discontent with the administration of justice in this country is growing among the working-classes to an extent that may be dangerous. There are people who may say that statements I have made will foment such discontent, or even cause it. That is impossible. The working-classes will not read this book, and, if they do, it will not convince them unless what is said agrees with their own experience.

I make no pretence to be a reformer, though I hope that reform may come. All I have tried to do is to

tell what goes on in many of our courts and to suggest improvements. The instances I have given may not be striking, but they are certainly, in my experience and that of the men I know, representative. Destructive criticism is the only kind of criticism worthy the name. Constructive criticism is merely telling another man how to do his job. Actually it is not criticism at all. There are, however, certain obvious things that would have been done long ago if there were any political credit to be got by doing them. To these I propose to refer.

With regard to the machinery for trying persons accused of serious crime, the most important thing is to get rid of the undue haste that is often apparent at Assizes, although in fairness it should be said that this is more apparent in civil than in criminal cases. There are not enough judges. The cost of appointing more would be saved many times over by the more expeditious dealing with civil actions that would be made possible. Further money could be saved by doing away with the House of Lords as the ultimate court of appeal. It would also be of advantage if younger men were appointed as judges whenever possible. The powers of the Court of Criminal Appeal should be largely increased, and the jury system should be amended as indicated in an earlier chapter.

The main line of reform, however, in the higher criminal courts should be directed towards giving a better chance to a poor defendant, and preventing a ruinous burden of costs from falling upon those of moderate means. We are still to some extent under the influence of the old theory that counsel ought not to appear against the Crown in cases of felony. Sydney Smith did much by his writings to get rid of this in practice, but the old idea persists. If a man is put on trial for dangerously or carelessly driving a motor-car, and the case is dismissed, he occasionally gets costs against the prosecution. But not so if the charge is,

say, murder or burglary. There is no reason for the distinction except a survival of the old theory to which I have referred.

The Poor Prisoners' Defence Act, as at present administered, is useless. As we have seen in dealing with the Rouse Case, the cost of the prosecution was £2500, and the maximum allowable to the defence would have been about one per cent of that sum. Neither is defence at the expense of a newspaper, for consideration undisclosed or for charity, a proper or an adequate solution.

The fair and proper thing would be for the State to pay the costs and expenses of the defence on the same scale as those of the prosecution. The theory of our law is that a right decision is most likely to be arrived at when each side of a case is presented as strongly as possible before an impartial judge and jury. It is an essential point in such a system of trial that the version put forward by either side should be tested as carefully and closely as possible by the opposing advocates and their experts, if any. Where the defence is obviously overmatched both in advocacy and in means of obtaining evidence it is obvious that the system cannot work properly.

Should the accused be found guilty it would be fair and reasonable that the costs of his defence should be recovered from him, provided he had the means. If a defendant wished to engage more expensive counsel than those employed by the prosecution he should be allowed to do so at his own expense, or to spend his own money on his defence in other directions, without forfeiting his right, if acquitted, to costs and disbursements on the same scale as the prosecution.

There does not appear to be any good reason against such a plan, which is indispensable if the theory of English Justice is to be carried out in practice. To suggest that it would be expensive implies that there are a considerable number of innocent persons

who are prosecuted. It would be quite practicable to give the Judge power in proper cases, as where an obvious guilty person got off on a technicality, to deprive a defendant of his costs. But if expense is to be considered a sufficient reason for providing justice of inferior quality why not go further, and make the defendant prove his innocence, leaving the prosecution no duty except that of making the accusation in due form? This would save a lot of expense.

The fact is that the present system is defended because officialdom never admits a mistake. Mr. Clynes was a Trade Union official. That is probably the reason that he was the worst Home Secretary within living memory. There are, of course, individual officials who are keen on reform. But the machine and its traditions are too strong for them. Mr. Winston Churchill at the Home Office would probably make things move, but Heaven knows in what direction.

Another matter of importance in criminal trials is that the opening speech of counsel for the prosecution should be limited to the barest possible outline. Mr. Napier, in *Murder by Jury*, makes this suggestion. It is necessary that there should be an opening, otherwise it would be almost impossible for the jury to follow the evidence intelligently. But that is no reason why counsel should be permitted to impress the minds of a jury with a connected story which will certainly in part be supported by the evidence of witnesses, and which will in all probability prejudice the jury throughout the trial. The tradition of a cold calm presentation of the case for the prosecution by a counsel who was indifferent to everything except the placing of the facts before the court, may at one time have been followed. No one who attends Assizes and Quarter Sessions at the present time can fail to notice that it has been supplanted by an obvious

"will to win" on the part of the counsel for the prosecution.

There was a deplorable example a short time ago of the failure of those responsible for a prosecution to realise what their attitude should be. After the usual preliminary proceedings before the magistrates a man was committed for trial at Assizes. Before the date of the Assizes the prosecution took out summonses for perjury against two witnesses who had given evidence for the defence at the police court. As the Lord Chief Justice said when he heard what had been done: "It is difficult to find suitable words in which to characterise such a proceeding." Anyone interested will find further details in *The Justice of the Peace* for 9th April, 1932, at page 230.

Prohibition of the publication of reports of preliminary proceedings before the justices and in the Coroner's Court is also necessary, if an accused person is to have a fair trial before a jury. The Coroner's Court should be entirely done away with, as it is entirely useless and costs a very considerable amount. No one would regret its passing except the coroners themselves and insurance companies, who find it a useful source of evidence to be used at subsequent proceedings.

Another reform would be the abolition of Quarter Sessions, which, as previously explained, now serves no useful purpose. It is unnecessary to recapitulate the reasons already given, but there is another objection to Quarter Sessions in towns of which I was reminded by attendance at such a court a few days before this was written. Juries at Borough Quarter Sessions have usually heard a good deal about a case, have often been intentionally told things by interested parties, and almost invariably have read reports of preliminary proceedings. I was asked by one of my clients, who was out on bail, whether there was any way of preventing old so-and-so from being on the

jury which would try his case, as he had been told this man was being specially put on. I told him there was no difficulty in keeping him off. To my surprise old so-and-so was the fourth or fifth name called. He was promptly challenged and did not serve. I make no comment, except that it was a curious coincidence.

I do not think Grand Juries should be abolished. Even as it is, they throw out a considerable number of bills, and they provide a constitutional safeguard of importance. Their abolition is demanded by the kind of people who give up fire insurance because they have not had a fire for some years.

There is very little inherently wrong with the police. They are now getting over the effects of the war and of emergency legislation. They are exposed to very many temptations, and are compelled to attempt the enforcement of unpopular laws, and this has had its inevitable result in many quarters. Unless the magistrates abandon their present attitude of "supporting the police", matters will get rapidly worse. But unless the justices are themselves reformed, they cannot be of real use as a check upon the police.

So far as police organisation is concerned the present system should be abolished, and central control substituted. There is at present often jealousy between county and borough police, which prevents prompt and efficient dealing with crime. The police themselves do not much like the idea of amalgamation of forces and central control, as they fear it would mean constant shifting of men about the country. It is, however, necessary, and it need not involve frequent transfers among the lower ranks.

The police should be under the direct control of the Home Office, and local authorities should have nothing to do with either pay or control of the force. The regulation of traffic should be taken entirely away from the police, and a special body of men formed for the purpose. This would free the police for their

proper duties. It would be an advantage if such matters as licensing and the enforcement of the betting laws—so far as these are to be continued—were taken out of the hands of the police. They would thereby be freed for their proper duties, the prevention and detection of crime, and the maintenance of order.

The hands of the police should be strengthened with regard to the questioning of persons supposed to have knowledge relating to a crime.

It should be an offence to refuse to give information when properly called upon, though any person should have the right to decline to answer questions otherwise than before a magistrate at a convenient time. Legislation would be necessary, and penalties should be provided for making false statements. This would do away with any excuse for "third degree" or other bullying methods, and would give the police a fair chance, which they have not at present so long as they keep within the law.

It is probable that the laws with regard to betting and gambling will be amended in many respects in the near future. Personally, I fear that alterations in the law are likely to go too far, but almost anything is better than the present farce. It is, I suppose, too much to hope for that the licensing question will ever be dealt with on reasonable lines. The magisterial attitude towards it is still very much the same as that of the eighteenth century legislators. Section 2 of the Act 25 George II, C. 36, is worth quoting, for the same spirit still persists, and animates the majority of licensing justices:

"And whereas the multitude of places of entertainment for the lower sort of people is another great cause of thefts and robberies as they are thereby tempted to spend their small substance in riotous pleasures, and in consequence are put on unlawful methods of supplying their wants and renewing their pleasures: In order, therefore, to prevent the said

temptation to thefts and robberies, and to correct as far as may be the habit of idleness which is become too general over the whole Kingdom, and is productive of much mischief and inconvenience: Be it enacted by the authority aforesaid, that from and after the First day of December, 1752, any house, room, garden, or other place kept for public dancing, music or other public entertainment of the like kind, in the cities of London and Westminster, or within twenty miles thereof, without a licence had for that purpose from the last preceding Michaelmas Quarter Sessions of the peace . . . shall be deemed a disorderly house or place."

This Act is still in force, though not over the whole of the original area, and licences are now granted by the London County Council. Amendments have been made as to procedure only. As *Paterson's Licensing Acts* remarks on page 234 of the 42nd edition:

"It is, of course, no answer that there was in fact no disorderly or improper conduct (R. *v.* Wolfe (1849), 13 J.P., 428)."

Our law, procedure and administration with regard to criminal and quasi-criminal matters is largely obsolete. If a doctor, an engineer, a soldier or a sailor of a hundred years ago were to be brought among us to-day he would have to begin his education afresh. But a week or two's study and a little practical coaching would enable a criminal lawyer, whether barrister or solicitor, to carry on practice with little difficulty. Charles Dickens would be depressed to find how little change there was. There is only one other institution equally obsolete in its atmosphere and procedure. Curiously enough, it is the Supreme Court of the country, Parliament.

We have tried to put new wine into old bottles. Worse still, we are using bottles of inferior quality. The Justices of the Peace were never intended to be a

Court for the trial of serious offences. At any time they were hopelessly unsuitable for such a purpose. But while we have immensely enlarged the jurisdiction of the justices we have appointed men of a much inferior type to carry out far more responsible duties than magistrates formerly had to execute.

Parliament continues to put Acts into force, and to leave questions and offences arising thereunder to be tried by the Courts of Summary Jurisdiction. The Mental Deficiency Acts, whose importance is just beginning to be realised, are largely dealt with by the justices. It is likely enough that they will presently be called upon to decide whether or not men and women shall be sterilised. Our legislators seem to regard the Courts of Summary Jurisdiction as a kind of legal Woolworths, supplying cheap brands of justice suitable for the lower classes. There is a limit to this kind of thing if the law is not to be brought into contempt, and it has probably already been passed.

The unpaid magistrates constitute the worst feature of English Justice. They might be one of the best. Four things are urgently necessary. First, the whole system of appointing magistrates should be altered, and every trace of political influence cut out. I have made detailed suggestions in the chapter on "Magistrates".

Second, appeals from the magistrates' decisions should be made easier, simpler and cheaper. This alone would bring about an immense improvement. In the chapter on "Appeals" are proposals as to how this should be done. Its necessity is universally recognised.

Third, Magistrates' Clerks should be whole-time men and debarred from private practice. This is a point of great importance, and immediate steps should be taken to bring it about, as it will take a few years to carry through.

Fourth, the name of the "Police Court" should be

changed, and it should somehow be impressed upon the magistrates that they are entirely independent of the police. At present they appear to act almost literally under the orders of the police with regard to such matters as granting bail. There was an absurd case of this a year or two ago, when an American friend of Mr. and Mrs. Bertrand Russell was remanded in custody on some political charge, bail being fixed at £1000 because the police wished it.

Even when the magistrates are reformed they will still be unfit to deal with such matters as matrimonial cases and bastardy applications. Applications for committal orders in respect of rates should also be transferred to the County Court. In criminal cases magistrates should not be allowed to impose the payment of costs. A fine should be an inclusive penalty, and most of the exceptions as to giving time to pay should be abolished. Time should automatically be given unless the Court at the time of giving their decision otherwise orders. Forcing a man to wait to make his application for time should be done away with.

I have dealt with a large number of other points in previous chapters. It is useless to repeat them here. What I fear is that I may not have convinced those who read this book of the urgent need for reform. I have no sensational tales to tell. Some people may think that, accepting all that has been said, it does not amount to much. Injustice, even on a small scale, seems to me to be always a matter of importance. And I have seen injustice happening, day by day, in court after court. I may not have succeeded in telling my story so as to convince others, but what I have seen and heard has convinced me that the majority of people in this country have no confidence whatever in English Justice.

One often hears it said that such and such a thing could not have happened, because of some rule or

regulation to the contrary. I have seen Mr. Galsworthy criticised because he made a magistrate do certain things which it was argued a magistrate would not have done, because to do so would have been improper and illegal. I have myself seen a magistrate do the very things. I am often reminded of a young solicitor who was doing some prison visiting. He asked a man what he was there for. On being told he said, "But they couldn't give you six months for that." "Yeah!" said the prisoner, "couldn't they? Then where the hell am I?"